United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-2637

B
P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

STANLEY SILVER,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

DI FALCO, FIELD & O'ROURKE
605 Third Avenue
New York, New York 10016
Attorneys for Defendant-Appellant

DAVID G. TRAGER
United States Attorney
Eastern District of New York

HOWARD J. STECHEL
Assistant U. S. Attorney
225 Cadman Plaza East
Brooklyn, New York 11201

MARK A. CYMROT
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Civil Division
Department of Justice
Washington, D.C. 20530
Attorneys for Plaintiff-Appellee

3

PAGINATION AS IN ORIGINAL COPY

INDEX

Docket Entries

1/22/74	Complaint filed. Summons issued.
2/14/74	Summons returned & filed./Executed.
2/25/74	ANSWER of deft filed.
4/17/74	Before BARTELS, J.—Case called—Status report set down for 5/29/74—All discovery to be complete by this date (Arthur Field attys for deft notified)
5/20/74	Interrogatories by pltff purs. to Rule 33 FRCP filed.
5/29/74	Before BARTELS, J.—Case called—Final Status report set down for 8/5/74
9/ 9/74	Notice of motion for an order granting pltff summary judgment pursuant to Rule 56 filed ret. 9-20-74
9/ 9/74	Memorandum of law in support of above motion filed
9/12/74	Notice of Cross-Motion for Summary Judgment, ret. Sept. 20, 1974 filed.
9/12/74	Deft's Memorandum of Law filed.
9/23/74	Memorandum of Law in Opposition to deft's cross-motion for summary judgment and in further support of motion of the U.S.A. for summary judgment filed.
9/27/74	Before BARTELS, J.—Case called—Motion for an order purs. to Rule 56—Decision reserved.

10/ 1/74	Deft's reply memorandum of law filed.
10/23/74	By BARTELS, J.—Order dated Oct. 22, 1974 filed that the deft's motion for summary judgment is denied and pltff's motion is granted. P.C. mailed to the attys.
10/30/74	JUDGMENT dtd 10-30-74 that pltff recover of deft the sum of $24,000 plus interest and costs filed. (p/c mailed to attys).
11/ 7/74	Notice of appeal filed. Duplicate of appeal & duplicate of docket entries mailed to C of A. Duplicate of appeal mailed to pltff. jn
12/18/74	Stipulation amending notice of appeal filed. Copy sent to Court of Appeals.
	Clerk's Certificate

Complaint

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Civil Action No. 74 C 113

[CAPTION OMITTED]

The UNITED STATES OF AMERICA, by its attorney, EDWARD JOHN BOYD V, United States Attorney for the Eastern District of New York, complaining of the defendant, upon information and belief, respectfully alleges:

COUNT I

1. This is a civil action brought by the United States of America to recover double damages and forfeitures under the False Claims Act, Title 31, United States Code, §§231-235. This Court has jurisdiction of this action pursuant to Title 31, United States Code, §232.

2. Defendant resides or otherwise is subject to service of process within the jurisdiction of this Court.

3. At all times relevant herein, namely, January, 1970 to August, 1971, defendant was the President of Intertech Industries, Inc., a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1390 Jerusalem Avenue, North Merrick, New York.

4. At all times relevant herein, Consolidated Industries, Inc., was a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business at Mixville Road, Cheshire, Connecticut.

5. At all times relevant herein, Intertech Industries, Inc. held Contract Number N00197-68-C0581 with the United States, as administered by the Defense Contracts Administration Services Region (DCASR), 60 Hudson Street, New York, New York, and Consolidated Industries, Inc. was a subcontractor under this contract.

6. On or about January 26, 1970, Intertech Industries, Inc. filed a Petition in Bankruptcy under Chapter XI of the Bankruptcy Act, Title 11, United States Code, §701, *et seq.*, in the United States District Court for the Eastern District of New York, Debtor Case Number 70 B 59, and during the relevant period thereafter this action was pending.

7. On or about July 27, 1970, Intertech Industries, Inc. executed an assignment of all proceeds of the aforesaid contract to the Home National Bank and Trust Company, Cheshire Office, 20 South Main Street, Cheshire, Connecticut. Said assignment became effective on or about August 3, 1970, pursuant to the order of the Honorable Boris Radoyevich, Referee in Bankruptcy, United States District Court, Eastern District of New York, Mineola, New York.

8. In accordance with the terms and conditions of the aforesaid assignment and order, all proceeds of Contract Number N00197-68-C0581 were to be paid to the Home National Bank and Trust Company to be distributed thereby

to the defendant and the Consolidated Industries, Inc. in a ratio designated by the Court Order.

9. On six occasions during the relevant period herein, defendant presented a forged or altered letter to DCASR which purportedly authorized defendant to receive payment under the aforesaid contract and assignment on behalf of the Home National Bank and Trust Company, and, on each occasion, DCASR delivered to defendant Stanley Silver, a Treasury check made payable to the Home National Bank and Trust Company.

10. Whereupon, during the relevant period herein, defendant Stanley Silver forged the indorsement of the Home National Bank and Trust Company on each of the aforementioned Treasury checks, and on behalf of Intertech Industries, Inc. presented or caused to be presented each of the checks for payment to the United States Treasury. Each of the aforesaid checks was honored and paid upon presentment to the account of Intertech Industries, Inc.

11. Each of the aforesaid checks, as the said defendant then and there well knew, was false, fictitious and/or fraudulent, as neither defendant Stanley Silver nor Intertech Industries, Inc. was the true payee of the check.

12. The foregoing considered, the defendant knowingly presented or caused to be presented false claims against the United States of America, as described in detail in Schedule A annexed hereto and made a part hereof, in violation of the False Claims Act, *supra*.

COUNT II

13. Plaintiff United States of America repeats and realleges each and every allegation contained in paragraphs 1 through and including 12, of this Complaint with the same force and effect as if fully set forth at length in this paragraph.

14. During the relevant period herein, namely, January, 1970 through August, 1971, Rimer Precision Casting, Inc., was a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Toledo, Ohio.

15. During the relevant period herein, Intertech Industries, Inc. held Contract Number DAAF 01-69-C0688 with the United States, as administered by DCASR, and Rimer Precision Casting, Inc. was a subcontractor under this contract.

16. On or about July 23, 1970, Intertech Industries, Inc. executed an assignment of all proceeds of the aforesaid contract to the First National Bank of Toledo, Ohio. Said assignment became effective on or about August 10, 1970, pursuant to the order of the Honorable Boris Radoyevich, Referee in Bankruptcy, United States District Court, Eastern District of New York, Mineola, New York.

17. In accordance with the terms and conditions of the aforesaid assignment and order, all proceeds of Contract Number DAFF 01-69-C0688 were to be paid to the First

National Bank of Toledo, to be distributed thereby to Rimer Precision Casting, Inc. and defendant Stanley Silver in a ratio designated by the Court Order.

18. On six occasions during the relevant period herein, defendant Stanley Silver presented a forged or altered letter to DCASR which purportedly authorized said defendant to receive payment under the aforesaid contract and assignment on behalf of the First National Bank of Toledo, and on each occasion, DCASR delivered to said defendant a Treasury check made payable to the First National Bank of Toledo.

19. Whereupon, during the relevant period herein, defendant Stanley Silver forged the indorsement of the First National Bank of Toledo on each of the aforementioned Treasury checks, and on behalf of Intertech Industries, Inc. presented or caused to be presented each of the checks for payment to the United States Treasury. Each of the checks was honored and paid upon presentment to the account of Intertech Industries, Inc.

20. Each of the aforesaid checks, as the said defendant then and there well knew, was false, fictitious and/or fradulent, as neither defendant Stanley Silver nor Intertech Industries, Inc. was the true payee of the check.

21. The foregoing considered, the defendant knowingly presented or caused to be presented false claims against the United States of America, as described in detail in Schedule B, annexed hereto and made a part hereof, in violation of the False Claims Act, *supra*.

WHEREFORE, the United States of America, demands judgment against the defendant Stanley Silver, for twice the damages sustained by plaintiff for the doing or committing of the acts and practices alleged in Counts I and II herein plus forfeitures and interest as allowed by law and the costs and disbursements of this action and such other or further relief as to this Court seems just and proper.

Dated: Brooklyn, New York
January 22, 1974

EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By HOWARD J. STECHEL
Assistant U. S. Attorney

MARK A. CYMROT, Esq.
Attorney, Civil Division
United States
Department of Justice
Washington, D. C. 20530
(Of Counsel)

SCHEDULE A

FALSE CLAIMS AGAINST THE UNITED STATES

Treasury Checks Made Payable to the Home National Bank and Trust Company, Cheshire, Connecticut Paid Over Forged Indorsements

Date	*Amount*
October 22, 1970	$9,438.57
November 10, 1970	9,438.57
December 4, 1970	9,438.57
December 14, 1970	9,438.57
January 20, 1971	9,438.57
March 8, 1971	3,539.47

SCHEDULE B

FALSE CLAIMS AGAINST THE UNITED STATES

TREASURY CHECKS MADE PAYABLE TO THE FIRST NATIONAL BANK OF TOLEDO, OHIO PAID OVER FORGED INDORSEMENTS

Date	*Amount*
February 1, 1971	$ 8,168.95
February 8, 1971	16,337.90
March 22, 1971	8,168.95
May 3, 1971	8,168.95
May 26, 1971	17,971.69
August 11, 1971	8,220.11

Answer

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

The defendant, STANLEY SILVER, by DI FALCO, FIELD & O'ROURKE, his attorneys, for his Answer to the complaint:

1. Denies each and every allegation contained in paragraph designated "9" thereof, except that he admits that he received certain checks from DCASR, made payable to the Home National Bank and Trust Company.

2. Denies that each of the aforesaid checks was false, fictitious and/or fraudulent.

3. Denies each and every allegation contained in paragraph designated "12" thereof.

4. Denies so much of paragraph designated "13" thereof which repeats and realleges the allegations heretofore denied.

5. Denies each and every allegation contained in paragraph designated "18" thereof, except that he admits he received certain checks from DCASR, made payable to the First National Bank of Toledo.

6. Denies so much of paragraph designated "20" thereof which alleges that each of the aforesaid checks was false, fictitious and/or fraudulent.

7. Denies each and every allegation contained in paragraph designated "21" thereof.

8. Denies so much of Schedules A and B which alleges that said checks represent false claims against the United States.

WHEREFORE, the defendant respectfully demands judgment dismissing the complaint herein.

Dated: New York, New York
February 22, 1974

DI FALCO, FIELD & O'ROURKE
by ARTHUR N. FIELD
Attorneys for Defendant
Office & P. O. Address:
605 Third Avenue
New York, New York 10016
(212) 986-2434

(Affidavit of Service omitted in printing.)

Notice of Motion

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

SIRS:

PLEASE TAKE NOTICE that plaintiff United States of America, by its undersigned attorney, will move this Court, Honorable John R. Bartels, presiding, on September 20, 1974, at Courtroom No. 4, Fourth Floor, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting plaintiff summary judgment on the grounds that there is no genuine issue as to any legally material fact and plaintiff is entitled to judgment as a matter of law and granting such other and further relief as the Court shall deem just and proper.

Dated: Brooklyn, New York
September , 1974

Yours, etc.,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

By: HOWARD J. STECHEL
Assistant U. S. Attorney

MARK A. CYMROT
Attorney, Frauds Section
Civil Division
United States Department of Justice
Washington, D. C. 20530

Attorneys for the United States of America

To:

ARTHUR N. FIELD, Esq.
DiFalco, Field & O'Rourke, Esqs.
605 Third Avenue
New York, New York 10016

Statement Pursuant to Rule 9(g) of the General Rules of This Court

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

The following are the material facts as to which plaintiff United States of America contends there is no genuine issue to be tried. Each material fact is followed by reference to the Answer, Answers to Plaintiff's Interrogatories, Further Answers to Interrogatories, and other portions of the record which incontrovertibly establish the fact.

MATERIAL FACT #1

This is a civil action brought by the United States of America to recover statutory forfeitures under the False Claims Act, 31 U.S.C. §§231-235. This Court has jurisdiction of this action pursuant to 31 U.S.C. §232.

REFERENCE #1

Admitted in the Answer.

MATERIAL FACT #2

Defendant resides or otherwise is subject to service of process within the jurisdiction of this Court.

REFERENCE #2

Admitted in the Answer.

MATERIAL FACT #3

At all times relevant herein, namely, January, 1970 to August, 1971, defendant was the President of Intertech Industries, Inc., a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1390 Jerusalem Avenue, North Merrick, New York.

REFERENCE #3

Admitted in the Answer.

MATERIAL FACT #4

At all times relevant herein, Consolidated Industries, Inc., was a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business at Mixville Road, Cheshire, Connecticut.

REFERENCE #4

Admitted in the Answer.

MATERIAL FACT #5

At all times relevant herein, Intertech Industries, Inc. held Contract Number NOO197-68-CO581 with the United States, as administered by the Defense Contracts Administration Services Region (DCASR), 60 Hudson Street,

New York, New York, and Consolidated Industries, Inc. was a subcontractor under this contract.

REFERENCE #5

Admitted in the Answer.

MATERIAL FACT #6

On or about January 26, 1970, Intertech Industries, Inc. filed a Petition in Bankruptcy under Chapter XI of the Bankruptcy Act, Title 11, United States Code, §701, et seq., in the United States District Court for the Eastern District of New York, Case Number 70 B 59, and during the relevant period thereafter this action was pending.

REFERENCE #6

Admitted in the Answer.

MATERIAL FACT #7

On or about July 27, 1970, Intertech Industries, Inc. executed an assignment of all proceeds of the aforesaid contract to the Home National Bank and Trust Company, Cheshire Office, 20 South Main Street, Cheshire, Connecticut. Said assignment became effective on or about August 3, 1970, pursuant to the order of the Honorable Boris Radoyevich, Referee in Bankruptcy, United States District Court, Eastern District of New York, Mineola, New York.

Statement Pursuant to Rule 9(g)

REFERENCE #7

Admitted in the Answer; See Also:

Exhibit 1—Assignment of Proceeds for Contract #NOO197-68-CO581 dated July 27, 1970.

Exhibit 2—Order of the Referee in Bankruptcy dated August 3, 1970.

MATERIAL FACT #8

In accordance with the terms and conditions of the aforesaid assignment and order, all proceeds of Contract Number NOO197-68-CO581 were to be paid to the Home National Bank and Trust Company to be distributed thereby to the Consolidated Industries, Inc. and Intertech Industries, Inc. in a ratio designated by the assignment and order.

REFERENCE #8

Admitted in the Answer. See also Exhibits 1 and 2.

MATERIAL FACT #9

On six occasions during the relevant period herein, defendant presented a photostat of an original letter to DCASR which purportedly authorized defendant to receive payment under the aforesaid contract and assignment on behalf of the Home National Bank and Trust Company, and on each occasion, DCASR delivered to the defendant one of the following Treasury checks made payable to the Home National Bank and Trust Company, A/C Intertech Industries, Inc., Cheshire Office, 28 South Main Street, Cheshire, Connecticut 06410:

Statement Pursuant to Rule 9(g)

Check No.	*Date*	*Amount*
840,726	October 21, 1970	$9,438.57
849,459	November 10, 1970	9,438.57
858,784	December 4, 1970	9,438.57
859,792	December 14, 1970	9,438.57
873,051	January 20, 1971	9,438.57
887,898	March 3, 1971	3,539.47

REFERENCE #9

Defendant admits receipt of the aforelisted Treasury checks in his Answer. See also, Answers to Plaintiff's Interrogatories #1, 2, 6, 7, 8 and Further Answer to Interrogatories #7.

Exhibits 3-8—Treasury checks payable to the Home National Bank & Trust Co. as listed above.

MATERIAL FACT #10

Whereupon, during the relevant period herein, defendant forged the indorsement of the Home National Bank and Trust Company on each of the aforementioned Treasury checks, and on behalf of Intertech Industries, Inc. presented or caused to be presented each of the checks for payment to the United States Treasury. Each of the aforesaid checks was honored and paid upon presentment to the account of Intertech Industries, Inc.

Statement Pursuant to Rule 9(g)

REFERENCE #10

Admitted in the Answer. See also Answers to Plaintiff's Interrogatories #3, 4.

MATERIAL FACT #11

Each of the aforesaid checks, as the said defendant then and there well knew, were false, fictitious and/or fraudulent, as neither defendant nor Intertech Industries, Inc. was the true payee of the check.

REFERENCE #11

In Answers to Plaintiff's Interrogatories #5, defendant states that he denies the Treasury checks are false, fictitious and/or fraudulent, "on the broad legal grounds that the checks were genuine checks".

Plaintiff contends that each of the aforelisted Treasury checks was false, fictitious and/or fraudulent within the meaning of the False Claims Act, Title 31 U.S.C. §231, by reason of the fact that neither the defendant nor Intertech Industries, Inc. was the true payee of the checks but rather defendant forged the indorsement on each check in order to obtain payment.[1]

Defendant admitted forging the indorsements on each of the Treasury checks in his Answer. See also, Answers to Plaintiff's Interrogatories #3, 4.

MATERIAL FACT #12

During the relevant period herein, namely, January, 1970 through August, 1971, Rimer Precision Casting, Inc. was a

[1] For a discussion of the legal issue involved, see Memorandum in Support of Plaintiff's Motion for Summary Judgment, p. 6.

corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Toledo, Ohio.

REFERENCE #12

Admitted in the Answer.

MATERIAL FACT #13

During the relevant period herein, Intertech Industries, Inc. held Contract Number DAAF 01-69-CO688 with the United States, as administered by DCASR, and Rimer Precision Casting, Inc. was a subcontractor under this contract.

REFERENCE #13

Admitted in the Answer.

MATERIAL FACT #14

On or about July 23, 1970, Intertech Industries, Inc. executed an assignment of all proceeds of the aforesaid contract to the First National Bank of Toledo, Toledo, Ohio. Said assignment became effective on or about August 10, 1970, pursuant to the order of the Honorable Boris Radoyevich, Referee in Bankruptcy, United States District Court, Eastern District of New York, Mineola, New York.

REFERENCE #14

Admitted in the Answer; See also:

Exhibit 9—Assignment of Proceeds of Contract #DAAF 05 [sic]-69-CO688 dated July 23, 1970.

Exhibit 10—Order of Referee in Bankruptcy dated August 10, 1970.

Statement Pursuant to Rule 9(g)

MATERIAL FACT #15

In accordance with the terms and conditions of the aforesaid assignment and order, all proceeds of Contract Number DAAF 01-69-CO688 were to be paid to the First National Bank of Toledo, to be distributed thereby to Rimer Precision Casting, Inc., and Intertech Industries, Inc. in a ratio designated by the assignment and order.

REFERENCE #15

Admitted in the Answer. Also see Exhibits 9 and 10.

MATERIAL FACT #16

On six occasions during the relevant period herein, defendant presented a photostat of an original letter to DCASR which purportedly authorized defendant to receive payment under the aforesaid contract and assignment on behalf of the First National Bank of Toledo, and on each occasion DCASR delivered to the defendant one of the following Treasury checks made payable to the First National Bank of Toledo, A/C: Intertech Industries, Inc., Toledo, Ohio:

Check No.	*Date*	*Amount*
877,541	February 1, 1971	$ 8,168.95
878,357	February 3, 1971	16,337.90
892,589	March 22, 1971	8,168.95
906,688	May 3, 1971	8,168.95
915,402	May 26, 1971	17,971.69
938,741	August 11, 1971	8,220.11

Statement Pursuant to Rule 9(g)

REFERENCE #16

Defendant admitted receipt of the aforelisted Treasury checks in his Answer. See also, Answers to Plaintiff's Interrogatories #1, 2, 6, 7, 8 and Further Answers to Interrogatories #7.

Exhibits 11-16—Treasury checks payable to the First National Bank of Toledo as listed above.

MATERIAL FACT #17

Whereupon, during the relevant period herein, defendant forged the indorsement of the First National Bank of Toledo on each of the aforementioned Treasury checks, and on behalf of Intertech Industries, Inc. presented or caused to be presented each of the checks for payment to the United States Treasury. Each of the checks was honored and paid upon presentment to the account of Intertech Industries, Inc.

REFERENCE #17

Admitted in the Answer. See also, Answers to Plaintiff's Interrogatories #3, 4.

On January 12, 1973, defendant pled guilty to Count I of a thirteen-count indictment, 72 CR 955 (E.D.N.Y.), charging him with violations of Title 18 U.S.C. §§152, 495 and 2 for the same acts which are the subject matter of this civil action. See, Answers to Plaintiff's Interrogatories #11. As a result of the guilty plea, defendant is collaterally estopped from denying all facts that are necessary to the offense, i.e., that he knowingly forged the payee's indorse-

ment and published Treasury Check No. 877,541 dated February 1, 1972.[2]

Exhibit 17—Indictment. Criminal No. 72 Cr. 955.

MATERIAL FACT #18

Each of the aforesaid checks, as the said defendant then and there well knew, was false, fictitious and/or fraudulent, as neither the defendant nor Intertech Industries, Inc. was the true payee of the check.

REFERENCE #18

In Answer to Plaintiff's Interrogatories #5, defendant states that he denies the checks were false, fictitious and/or fraudulent "on the broad legal grounds that the checks were genuine checks".

Plaintiff contends that each of the aforelisted checks was false, fictitious and/or fraudulent within the meaning of the False Claims Act Title 31 U.S.C. §231, by reason of the fact that neither the defendant nor Intertech Industries, Inc. was the true payee of the checks but rather defendant forged the indorsement of each check in order to obtain payment.[3]

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[2] See *Emich Motors Corp.* v. *General Motors Corporation,* 340 U.S. 558, 569, 71 S.Ct. 408, 95 L.Ed. 534 (1951); *United States* v. *Eagle Beef Cloth Co., Inc.,* 235 F. Supp. 491, 492 (E.D.N.Y. 1964).

[3] For a discussion of the legal issue involved, see Memorandum In Support of Plaintiff's Motion For Summary Judgment, p. 6.

Statement Pursuant to Rule 9(g)

Defendant admitted forging the indorsements on each of the Treasury checks in his Answer. See also: Answers to Plaintiff's Interrogatories #3, 4.

DAVID G. TRAGER
United States Attorney
Eastern District of New York

By: HOWARD J. STECHEL
Assistant U. S. Attorney

MARK A. CYMROT
Attorney, Frauds Section
Civil Division
Department of Justice
Washington, D. C.

Attorneys for the
United States of America

Exhibit 1

[Assignment of Proceeds for Contract

#NOO197-68-CO581 Dated July 27, 1970]

(See opposite) ☞

Exhibit 1

To DCASD - Contracting Officer July 27 19 70
605 Stewart Avenue
Garden City, New York 11530

Re: Contract No. N00197-69-C-0581

Made by the United States of America

With Intertech Industries Inc.
(Name of Contractor)
1390 Jerusalem Avenue
North Merrick, New York
(Address of Contractor)

For Fin Assembly

In the increased/original sum of $ 136,361.25

Dated June 5, 1969

PLEASE TAKE NOTICE that (strike out whichever is not applicable)

(a) All moneys due or to become due under the terms of the foregoing contract have been assigned to the undersigned pursuant to the provisions of the Assignment of Claims Act of 1940, as amended.

~~(b) The assignment of all moneys due or to become due under the terms of the foregoing contract has been released by the undersigned and said contract reassigned to the contractor.~~

A true copy of the foregoing instrument of assignment/release is attached hereto.

If this is a notice of assignment, please note that all payments due or to become due under said contract should be made to the Assignee to the address given below.

Please return to the undersigned the three enclosed copies of this notice with appropriate notation showing the date and hour of receipt and duly signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,
~~XXXXXXXXXXXXXXXXXX~~
Home National Bank & Trust Co.
Cheshire Office
By Jeanne C. Morrissette
28 South Main Street
Cheshire, Conn. 06410
Jeanne C. Morrissette
Ass't. Vice-President

Receipt is hereby acknowledged of the above notice of assignment/release and a copy of the above mentioned instrument.

These were received at ..... M. on 31 August 1970
(Date)

John E. Giustino
(Signature)

In behalf of

JOHN E. GIUSTINO
ADMINISTRATIVE CONTRACTING OFFICER
(Name and title of addressee of notice)

LD-9 6-60 A

(Read carefully instructions on the reverse side.)

Exhibit 1

KNOW ALL MEN BY THESE PRESENTS:

FOR VALUE RECEIVED, receipt whereof is hereby acknowledged,

(an individual doing business as .....)

(a partnership consisting of .....)

(a corporation organized under the laws of the State of INtertech Industries Inc. .....),

with offices at 1390 Jerusalem Avenue, North Merrick, New York .....,

hereinafter designated "Assignor", does hereby sell, assign, transfer and set over unto

association, with one of its offices at

Home National Bank & Trust Company - Cheshire Office
28 South Main Street
Cheshire, Connecticut 06410 Jeanne Morrissette, Ass't. V.P.

hereinafter designated "Assignee", and its successors and assigns, all moneys now due or to become due to the Assignor under the terms of a certain contract (or arising out of the termination of said contract) made by and between the Assignor and the United States of America,

known as Contract No. N00197-69-C-0581

for Fin Assembly

for the sum of $ 136,361.25 KW, bearing the original date of the 5 day of June, 19 69 and under any additions, change orders, supplements or other modifications thereof, now or hereafter in effect, (the same being hereinafter referred to as the "Contract") as collateral security for any and all liabilities and obligations of the Assignor to the Assignee and claims of the Assignee against the Assignor, whether now existing or hereafter incurred, originally contracted with the Assignee and/or with another and now or hereafter owing to or acquired by the Assignee, absolute or contingent, matured or not matured.

AND the Assignor does hereby authorize, empower and direct the disbursing officer or office designated in said Contract or any successor thereof or any other department or other officer of the United States of America, to pay to the Assignee or its successors and assigns any and all moneys due or to become due to the Assignor by virtue of said Contract.

AND the Assignor does hereby irrevocably constitute and appoint the Assignee and its successors or assigns as its lawful attorney, with full power of substitution and revocation in the premises, at the cost and expense of the Assignor, and in the name of the Assignor or otherwise, to ask for, collect, demand and receive, to prosecute and sue for, by proceedings or otherwise, in the United States Court of Claims or in any court of law or equity or before any board, agency or department, to give acquittances for, any and all moneys due or to become due under said Contract, to withdraw, compromise or settle any claims, suits or proceedings, pertaining to or arising out of this assignment upon any terms or conditions, all without notice to or assent of the Assignor, and, further, to take possession of and to indorse in the name of the Assignor any check, warrant or other instrument for the payment of money received on account of any moneys due or to become due under said Contract. The Assignor also agrees that any payment or instrument for the payment of money which the Assignor may receive on account of said Contract shall be held in trust by the Assignor as the property of the Assignee and shall forthwith be delivered (duly indorsed by the Assignor when necessary) to the Assignee.

AND the Assignor does hereby represent and warrant: that it has complete right and title to said Contract, and any and all moneys due or to become due thereunder; that it has not previously assigned nor encumbered the same, and that it has a good right to assign the same to the Assignee; that no money or moneys has or have been paid on account of said Contract except the sum of $ 48,758.04 KW, leaving a balance due or to become due thereunder of the sum of $ 136,361.25 KW; that it has no outstanding commitment of the United States of America to make any advance payment to it on account of said Contract, nor has it received any advance payments on account thereof, except the sum of $ -0- ; that neither the United States nor any department or agency thereof has any claim against the Assignor which can in any way serve to reduce or be an offset to the indebtedness to the Assignor arising out of said Contract.

AND the Assignor does hereby covenant that it will give reasonable notice to the Assignee prior to any disposition or retention of property allocable to said Contract, other than delivery to the Department above mentioned, stating therein details of the proposed disposition or retention, and furnishing the name and address of the settling officer. Any payment on account of disposition of inventory allocable to said Contract which the Assignor may receive shall be held in trust as the property of the Assignee and shall be forthwith delivered and (when necessary) indorsed by the Assignor to the Assignee. The Assignor, upon its election to retain such inventory, shall pay immediately the cost of any such inventory which the Assignor has elected to retain and which it has not included in the claim founded on termination of said Contract. The Assignor will execute and deliver to the Assignee, upon demand, a chattel mortgage or other lien instrument in form satisfactory to the Assignee on any inventory thus retained, and assign in form satisfactory to the Assignee any account receivable created by the resale of any such inventory. The Assignor will furnish monthly to the Assignee a statement of the status of all such transactions.

AND the Assignor does hereby covenant: that it will do all on its part to be performed under the terms, covenants and conditions of said Contract, and that a notation will be duly made upon its books and records in conjunction with entries regarding said Contract of the fact of the making of this assignment, and that at the request of the Assignee, the Assignor shall deliver to the Assignee forthwith all original documents, including, but not limited to, the original contract, orders, invoices and delivery receipts regarding said Contract, and that the Assignee shall at all times have full and free access to the books, accounts, correspondence and records of the Assignor with respect to said Contract, and the right at all times to examine the same and to take extracts therefrom, except such thereof as may be restricted by requirement of the United States Government.

AND the Assignor does hereby covenant that the Assignor will make, execute and deliver any and all papers, instruments and documents that may be required by the Assignee or its successors and/or the United States of America or any department or officer thereof to effectuate the purpose hereof.

Wherever the neuter pronoun is inapplicable in the foregoing, the appropriate masculine or feminine pronoun shall be deemed substituted therefor.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly signed and sealed this 27 day of July, 1970.

INTERTECH INDUSTRIES INC. (SEAL)

By [signature]
President

ATTEST: [signature]

Exhibit 1

STATE OF
COUNTY OF } ss.:

On this day of , 19 , before me personally appeared , to me known and known to me to be the person mentioned and described in, and who executed the foregoing assignment, and he duly acknowledged to me that he executed the same.

STATE OF Connecticut
COUNTY OF New Haven } ss.: Cheshire

On this 31st day of July , 1970, before me personally came Gerald J. Abrinib ~~and~~ who, being duly severally sworn, did depose and say that ~~they~~ he reside, ~~respectively~~ at 946 Barrie Ave, Westleigh, N.Y. ~~and~~ ; that ~~they respectively are~~ he is the Treasurer ~~and the~~ of Intertech Industries Inc the corporation described in and which executed the above assignment; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order.

Allen H. Clay
Notary Public

My commission expires April 1, 1971

STATE OF
COUNTY OF } ss.:

On this ..... day of ..... , 19 ..... , before me personally appeared ..... , to me known and known to me to be a member of the firm of ..... mentioned and described in, and which executed the foregoing assignment, and the said ..... duly acknowledged to me that he executed said agreement for and on behalf and with the authority of the said firm of ..... for the uses and purposes therein mentioned.

(The notary should be sure to sign and affix both his stamp and seal on all copies.)

Exhibit 2

[Order of the Referee in Bankruptcy
Dated August 3, 1970]

(See opposite) ☞

Exhibit 2—Order

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

No. 70 B 59

In the Matter

—of—

INTERTECH INDUSTRIES, INC.,

Debtor.

PETITION AND ORDER FOR REASSIGNMENT OF CONTRACT No. CO197-69-CO581

At Mineola, New York, in said District on the 3rd day of August, 1970.

UPON the annexed petition of INTERTECH INDUSTRIES, INC., the Debtor herein, dated July 30, 1970, the order of HON. BORIS RADOYEVICH, Referee in Bankruptcy, dated July 16, 1970, the annexed letter of NAM & GUBA, ESQS., dated July 24, 1970, and sufficient cause appearing therefor, it is

ON MOTION OF SCHWARTZ & DUBERSTEIN, ESQS., attorneys for INTERTECH INDUSTRIES, INC.

ORDERED, that the order of HON. BORIS RADOYEVICH, dated July 16, 1970, authorizing INTERTECH INDUSTRIES, INC. to assign contract No. OO197-69-CO581 to the MARINE MIDLAND

GRACE TRUST COMPANY OF NEW YORK be and the same is hereby amended so as to indicate therein that the assignee be HOME NATIONAL BANK & TRUST CO., Cheshire Office, 28 South Main Street, Cheshire, Conn. 06410 instead of the MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK; and it is further

ORDERED, that in all other respects the aforesaid order of July 16, 1970 be and the same shall be deemed in full force and effect

BORIS RADOYEVICH
Referee in Bankruptcy

Exhibit 2—Petition

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

No. 70 B 59

In the Matter

—of—

INTERTECH INDUSTRIES, INC.,

Debtor.

PETITION

The petition of INTERTECH INDUSTRIES, INC., respectfully shows to this Honorable Court and alleges:

1. That it is the debtor herein.

2. That on July 16, 1970 an order was entered in these proceedings by HON. BORIS RADOYEVICH, Referee in Bankruptcy, authorizing your petitioner to assign contract No. OO197-69-CO581 to the MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK of 250 Park Avenue, New York, N. Y.

3. That annexed hereto is a letter of NAM & GUBA, ESQS. dated July 24, 1970, the attorneys for KEARNEY NATIONAL, INC., the subcontractor, indicating that MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK has declined the as-

signment, together with a request that the assignment run in favor of the HOME NATIONAL BANK & TRUST CO., Cheshire Office, 28 South Main Street, Cheshire, Conn.

4. That petitioner respectfully requests that the aforesaid order of July 16, 1970, be amended accordingly.

WHEREFORE, petitioner respectfully prays for the entry of the annexed order.

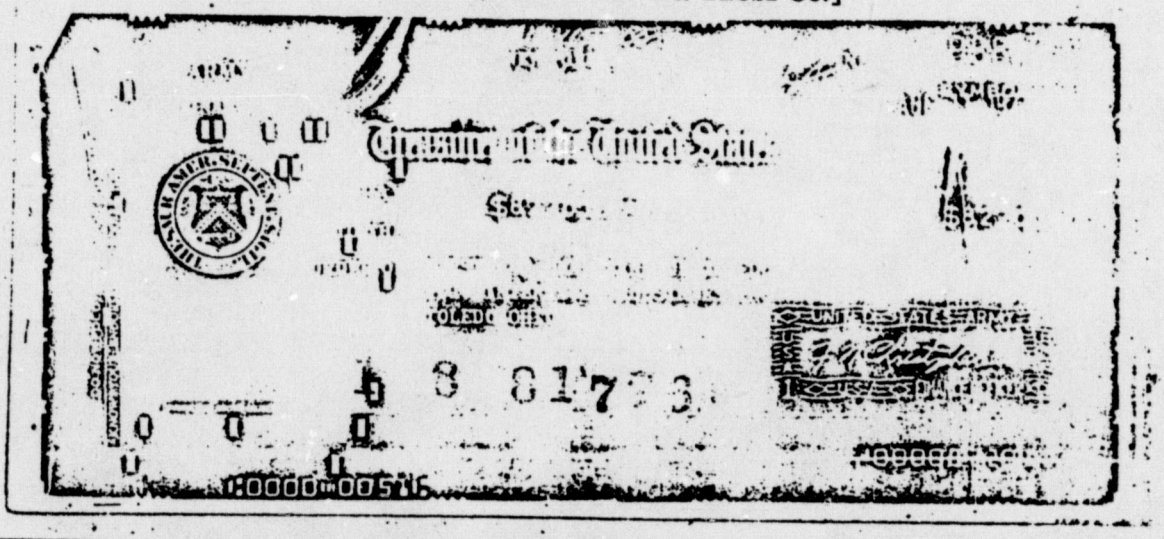
DATED: Brooklyn, New York
July 30, 1970

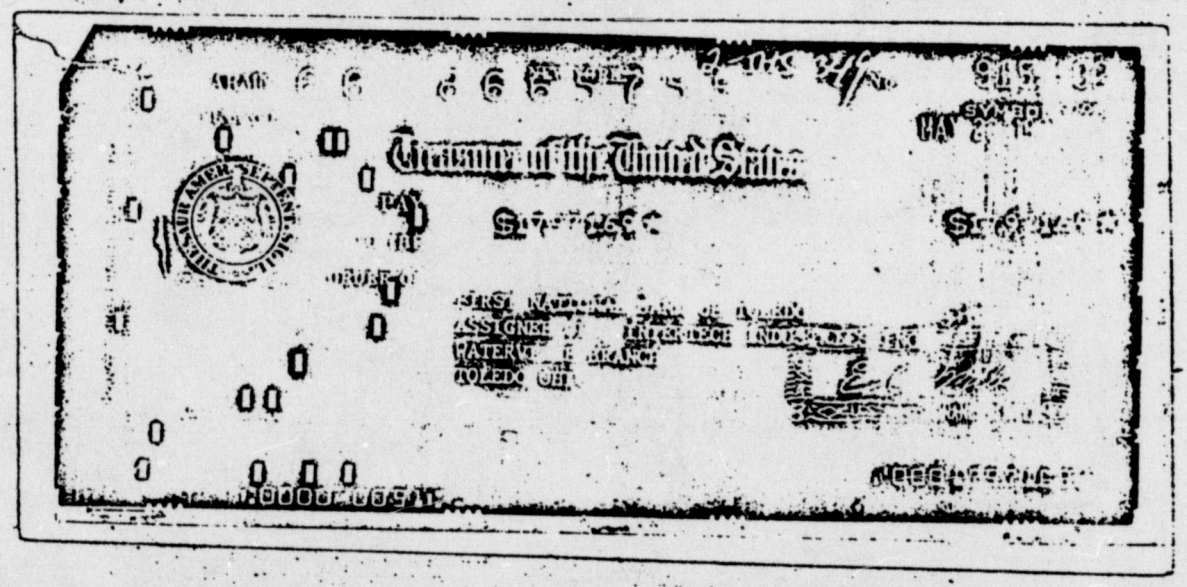
INTERTECH INDUSTRIES, INC.

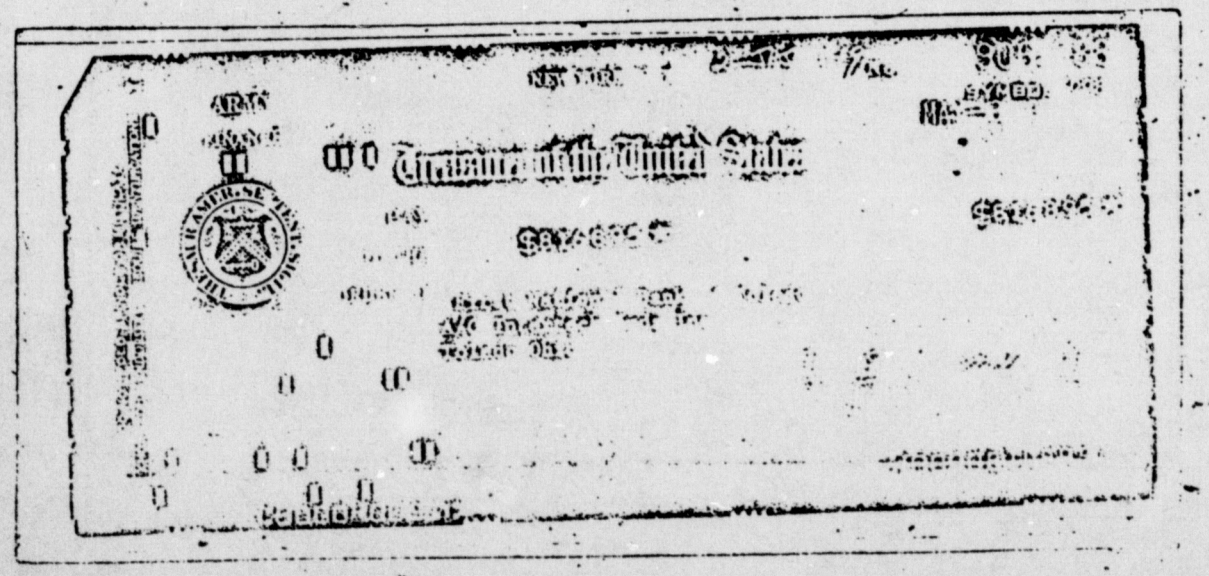
By: /s/ STANLEY SILVER
Stanley Silver, Pres.

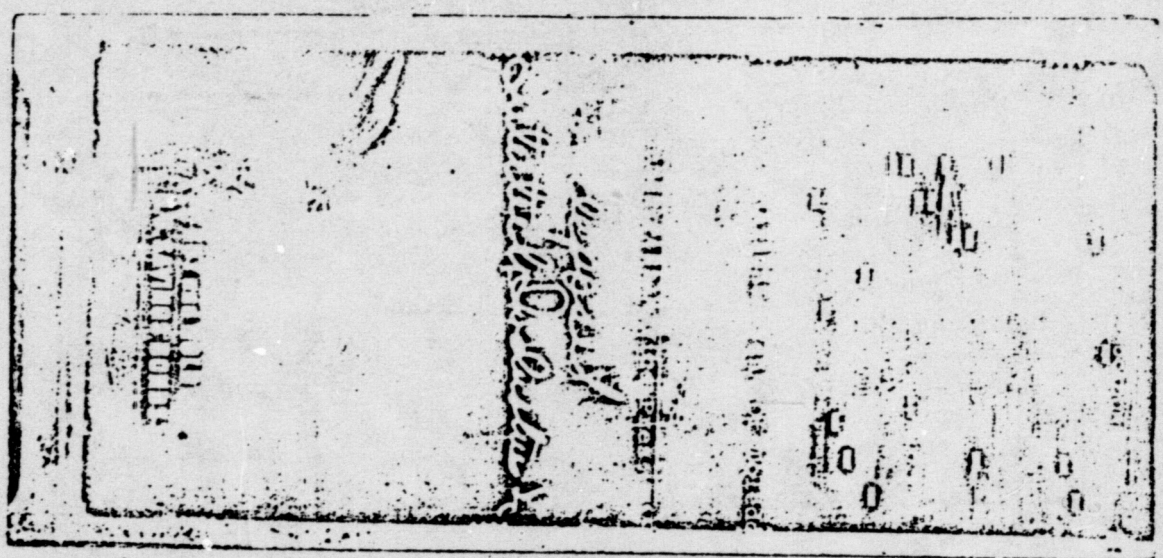
Exhibits 3 to 5

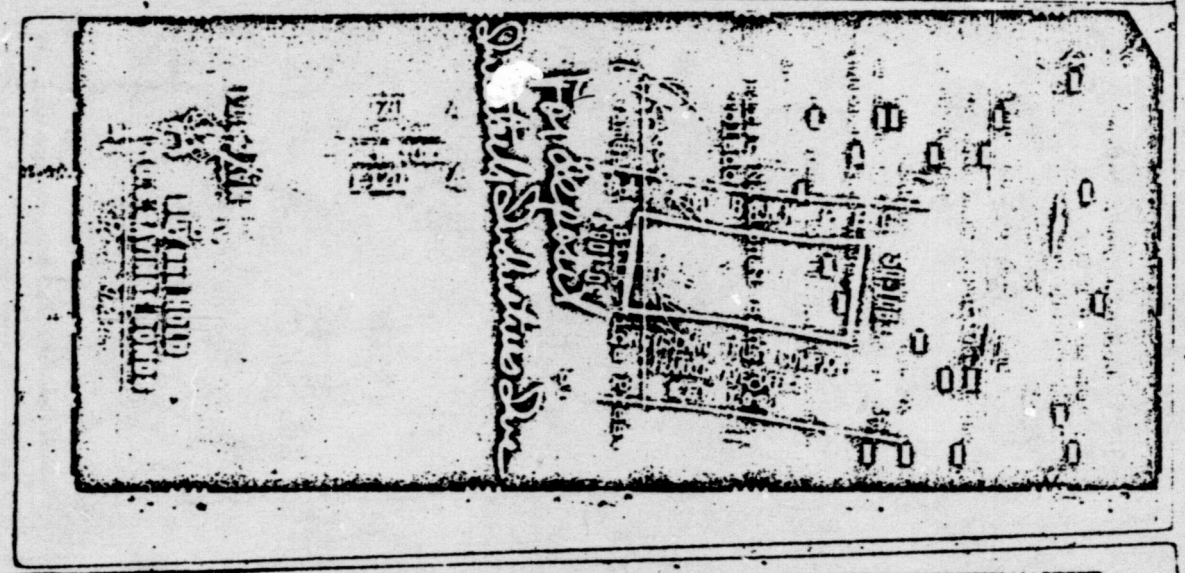
[Treasury Checks Payable to the Home National Bank & Trust Co.]

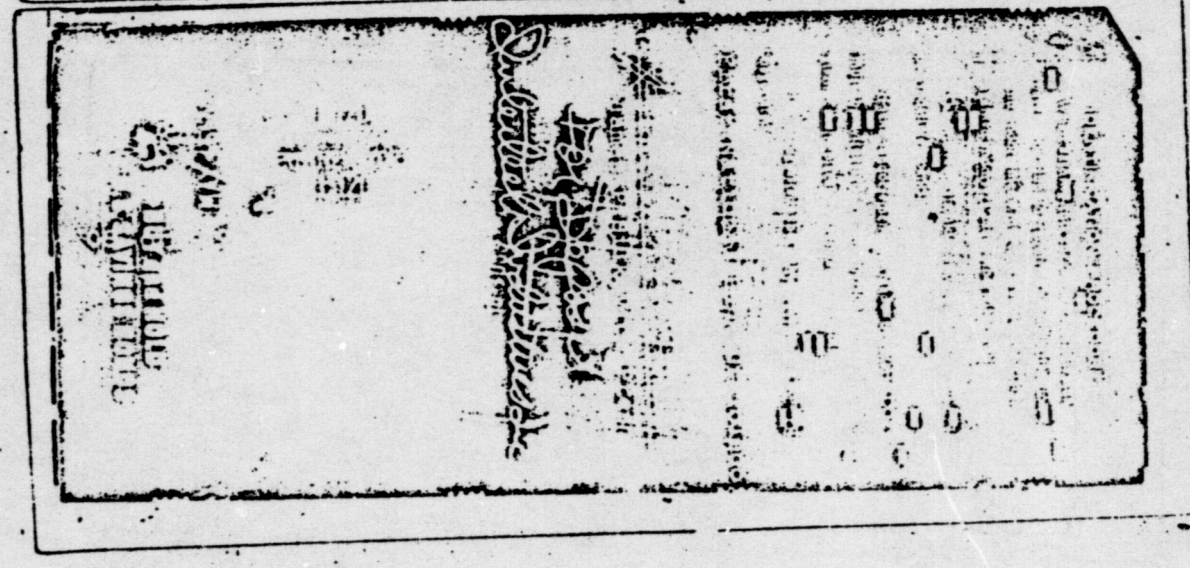






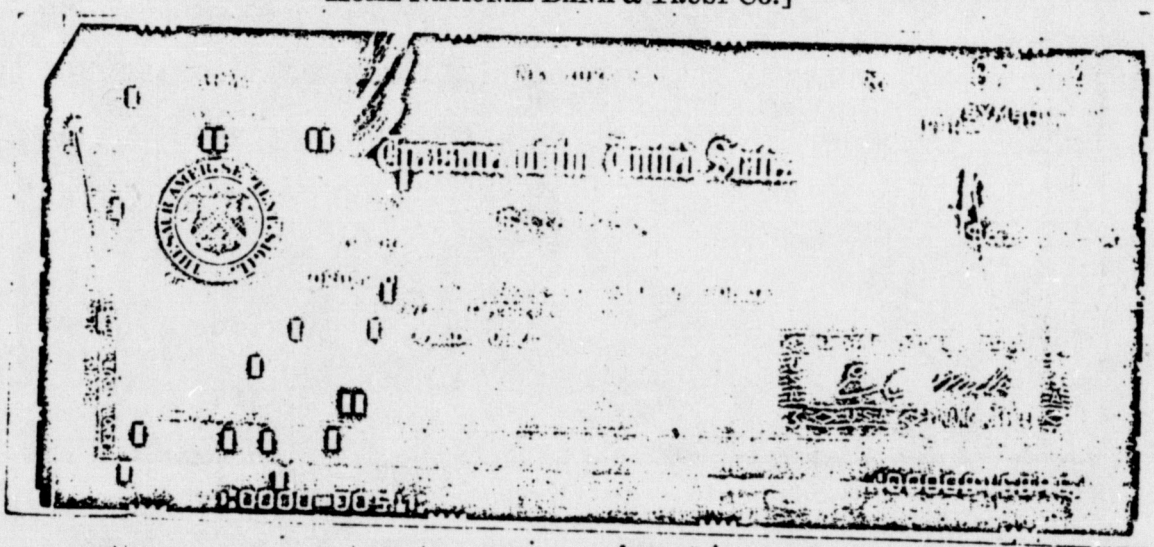


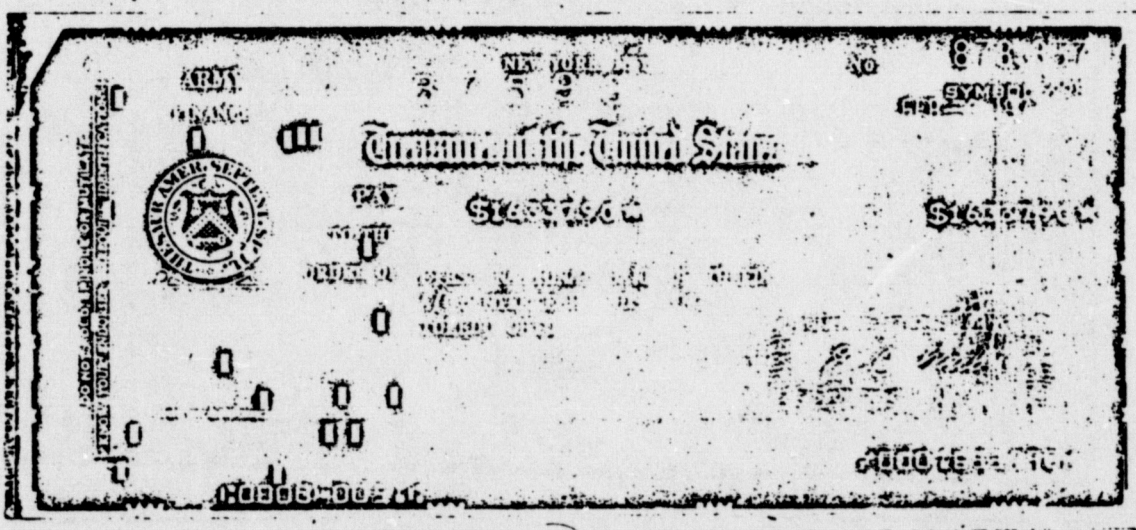


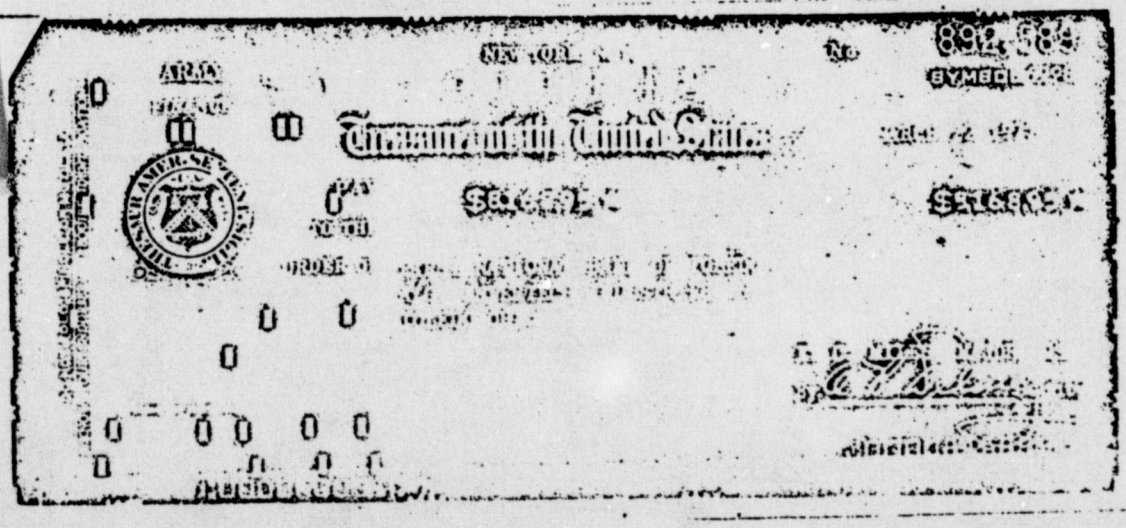


Exhibits 6 to 8

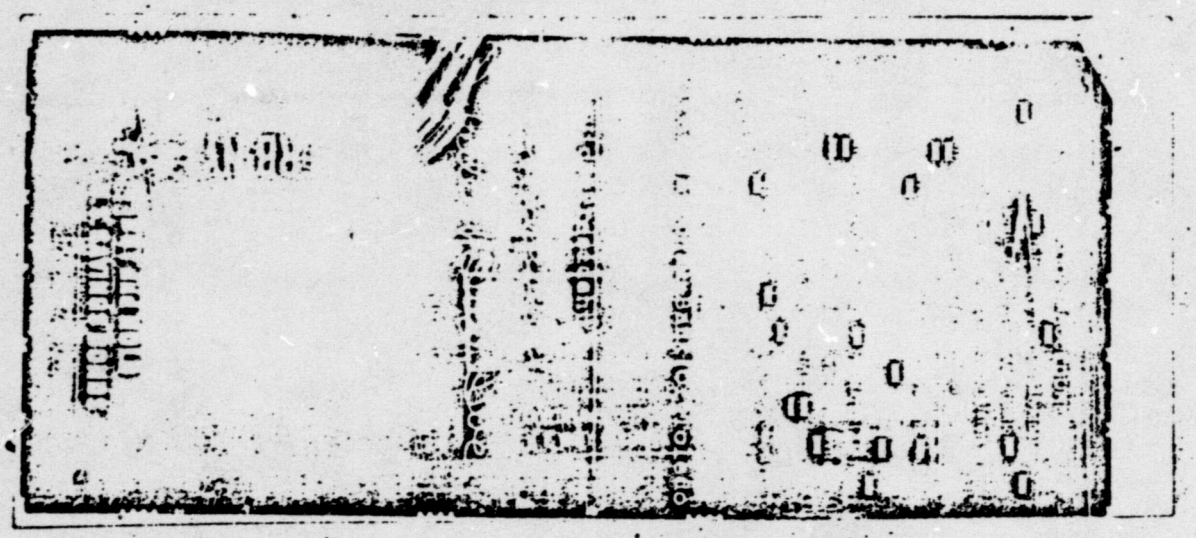
[TREASURY CHECKS PAYABLE TO THE HOME NATIONAL BANK & TRUST CO.]

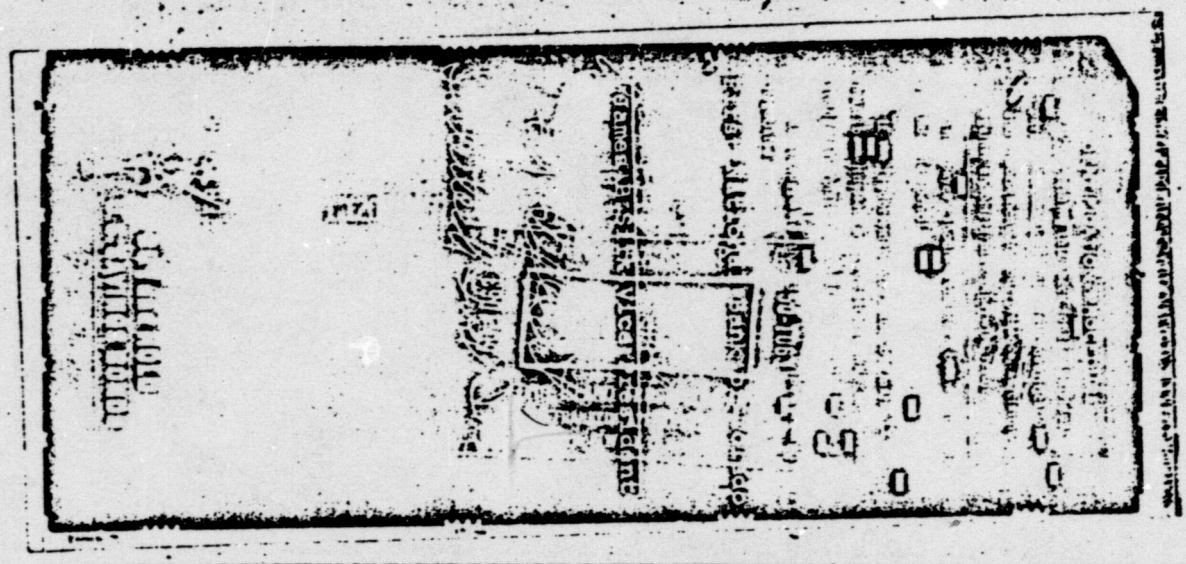






Exhibits 6 to 8





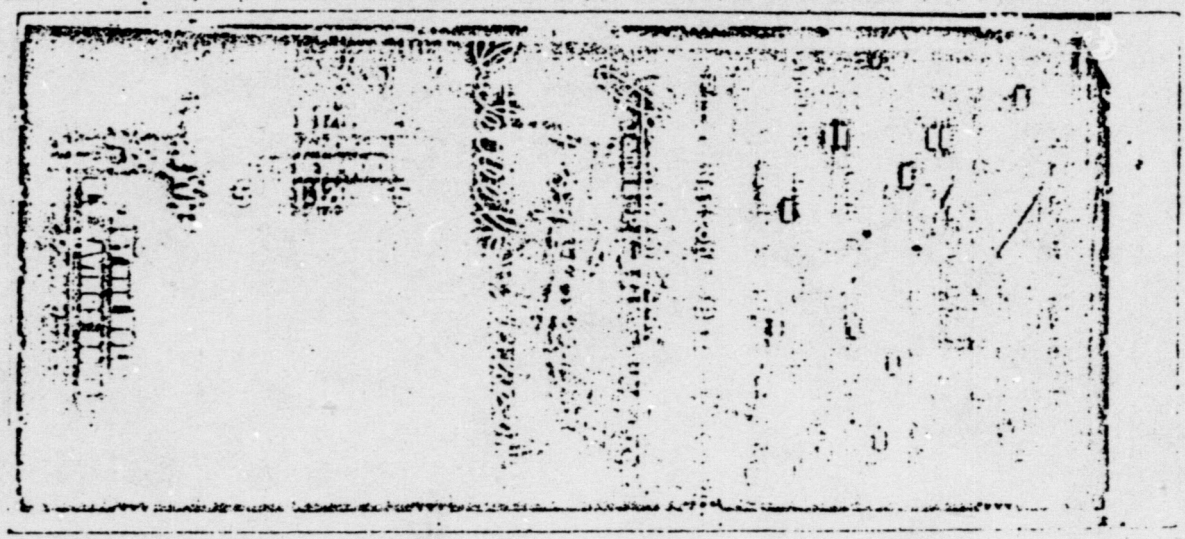


Exhibit 9

[ASSIGNMENT OF PROCEEDS OF CONTRACT #DAAF05-69-CO688 DATED JULY 23, 1970]

NOTICE

To DCASR - New York
Disbursing Officer
60 Hudson Street
New York, New York 10013

June 25 1970

Re Contract No. DAAF01-69-C-0688

Made by the United States of America

With Intertech Industries Inc.
(Name of Contractor)
1390 Jerusalem Avenue
North Merrick, New York 11566
(Address of Contractor)

For Trigger Housing

In the ~~increased~~ original sum of $ 111,705.00

Dated February 4, 1969

PLEASE TAKE NOTICE that (strike out whichever is not applicable)

(a) All moneys due or to become due under the terms of the foregoing contract have been assigned to the undersigned pursuant to the provisions of the Assignment of Claims Act of 1940, as amended.

~~(b) The assignment of claims exp[illegible] to become due under the terms of the foregoing contract [illegible] and said contract may not be [illegible] contractor.~~

A true copy of the foregoing instrument of ~~assignment~~ is attached hereto.

If this is a notice of assignment, please note that all payments due or to become due under said contract should be made to the Assignee to the address given below.

Please return to the undersigned the three enclosed copies of this notice with appropriate notation showing the date and hour of receipt and duly signed by the person acknowledging receipt on behalf of the addressee

Very truly yours,

~~[illegible]~~ First National Bank of Toledo
Waterville Branch

By R E Anderson
Secretary

~~[illegible]~~

Receipt is hereby acknowledged of the above notice of ~~assignment~~ and a copy of the above mentioned instrument.

These were received at ... M on OCT 06 1970 (Date) ...

(Signature)

Contracting Officer

I. Zimmerman
Administrative Contracting Officer

Exhibit 9

[illegible] doing business as

a partnership consisting of

a corporation organized under the laws of the State of Intertech Industries Inc.

[illegible] 1390 Jerusalem Avenue, North Merrick, N.Y.

[illegible] hereinafter sometimes called "Assignor", does hereby sell, assign, transfer and set over unto

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX with one of its offices at

First National Bank of Toledo
Waterville Branch
Mr. A. E. Anderson

hereinafter sometimes called "Assignee" and its successors and assigns, all moneys now due or to become due to the Assignor under the terms of a certain contract or arising out of the termination of said contract made by and between the Assignor and the United States of America,

[illegible] as Contract No: DAAF01-69-C-0688
[illegible] Trigger Housing

for the sum of $ 111,705.00, bearing the original date of the 24 day of February, 19 70 and under any additions, change orders, supplements or other modifications thereof, now or hereafter in effect, (the same being hereinafter referred to as the "Contract") as collateral security for any and all liabilities and obligations of the Assignor to the Assignee and claims of the Assignee against the Assignor, whether now existing or hereafter incurred, originally contracted with the Assignee and or with another and now or hereafter owing to or acquired by the Assignee, absolute or contingent, matured or not matured.

AND the Assignor does hereby authorize, empower and direct the disbursing officer or office designated in said Contract or any successor thereto or any other department or other officer of the United States of America, to pay to the Assignee or its successors and assigns all and all moneys due or to become due to the Assignor by virtue of said Contract.

AND the Assignor does hereby irrevocably constitute and appoint the Assignee and its successors or assigns as its lawful attorney, with full power of substitution and revocation in the premises, at the cost and expense of the Assignor, and in the name of the Assignor or otherwise, to ask for, collect, demand and receive, to prosecute and sue for, by proceedings or otherwise, in the United States Court of Claims or in any court of law or equity or before any board, agency or department, to give acquittances for, any and all moneys due or to become due under said Contract, to withdraw, compromise or settle any claims, suits or proceedings, pertaining to or arising out of this assignment upon any terms or conditions, all without notice to or assent of the Assignor, and, further, to take possession of and to indorse in the name of the Assignor any check, warrant or other instrument for the payment of money received on account of any moneys due or to become due under said Contract. The Assignor also agrees that any payment or instrument for the payment of money which the Assignor may receive on account of said Contract shall be held in trust by the Assignor as the property of the Assignee and shall forthwith be delivered duly indorsed by the Assignor when necessary to the Assignee.

AND the Assignor does hereby represent and warrant: that it has complete right and title to said Contract, and any and all moneys due or to become due thereunder; that it has not previously assigned nor encumbered the same, and that it has a good right to assign the same to the Assignee; that no money or moneys has or have been paid on account of said Contract except the sum of $ -0-, leaving a balance due or to become due thereunder of the sum of $ 111,705.00; that it has no outstanding commitment of the United States of America to make any advance payment to it on account of said Contract, nor has it received any advance payments on account thereof, except the sum of $ -0-, that neither the United States nor any department or agency thereof has any claim against the Assignor which can in any way serve to reduce or be an offset to the indebtedness to the Assignor arising out of said Contract.

AND the Assignor does hereby covenant that it will give reasonable notice to the Assignee prior to any disposition or retention of property allocable to said Contract, other than delivery to the Department above mentioned, stating therein details of the proposed disposition or retention, and furnishing the name and address of the settling officer. Any payment on account of disposition of inventory allocable to said Contract which the Assignor may receive shall be held in trust as the property of the Assignee and shall be forthwith delivered and [illegible] indorsed by the Assignor to the Assignee. The Assignor, upon its election to retain such inventory, shall pay immediately the cost of any such inventory which the Assignor has elected to retain and which it has not included in the claim founded on termination to a Contractor. The Assignor will execute and deliver to the Assignee, upon demand, a chattel mortgage or other lien instrument in form satisfactory to the Assignee on any inventory so retained, and assign in form satisfactory to the Assignee any account receivable created by the resale of any such inventory. The Assignor will furnish monthly to the Assignee a statement of the status of all such transactions.

AND the Assignor does hereby covenant that it will do all on its part to be performed under the terms, covenants and conditions of said Contract, and that a moratorium may be duly made upon the books and records in connection with entries regarding said Contract or the performance of this assignment and that at the request of the Assignee, the Assignor shall deliver to the Assignee forthwith all [illegible] including, but not limited to, the original contract, orders, invoices and delivery receipts regarding said Contract, and [illegible] the Assignee shall at all times have free and ready access to the books, accounts, correspondence and records of the Assignor with respect to said Contract, and the right at all times to examine the same and to take extracts therefrom, except such thereof as may be restricted by [illegible] United States Government.

AND the Assignor does hereby covenant to the Assignee that it will make, execute and deliver any and all papers, instruments and documents that may be required by the Assignee or its successors and by the United States of America or any department or officer thereof to effectuate the purpose hereof.

[illegible] in the foregoing the appropriate masculine or feminine pronoun shall be deemed [illegible]

IN WITNESS WHEREOF [illegible] this instrument to be [illegible] signed and sealed this 23 day of July, 19 70.

INTERTECH INDUSTRIES INC. (SEAL)

By [illegible]
President

ATTEST: [illegible]

[illegible]

Exhibit 9

STATE OF New York
COUNTY OF Nassau } ss.:

On this 6th day of August, 1970, before me personally appeared [illegible] WEINER to me known and known to me to be the person mentioned and described in, and who executed the foregoing assignment, and he duly acknowledged to me that he executed the same.

[illegible]
SEYMOUR GOLDSCHMIDT,
NOTARY PUBLIC, State of New York
No. 30-6504075
Qualified in Nassau County
Term Expires March 30, 1972

STATE OF
COUNTY OF } ss.:

On this day of , 19 , before me personally came

and who, being duly severally sworn, did depose and say that they reside

respectively, at and

that they respectively are the and the

of , the corporation described in and which executed the above assignment; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order.

STATE OF
COUNTY OF } ss.:

On this day of , 19 , before me personally appeared

to me known and known to me to be a member of the firm of mentioned and described in, and who executed the foregoing assignment, and the said duly acknowledged to me that he executed said agreement for and on behalf and with the authority of the said firm of for the uses and purposes therein mentioned.

(The notary should be sure to sign and affix to this stamp and seal on all copies)

Exhibit 10

[ORDER OF REFEREE IN BANKRUPTCY
DATED AUGUST 10, 1970]

(See opposite) ☞

Exhibit 10—Order

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

No. 70 B 59

In the Matter

—of—

INTERTECH INDUSTRIES, INC.,

Debtor.

At Mineola, New York, in said District on the 10th day of August, 1970.

At Mineola, New York, in said District on the 10th day of August, 1970.

UPON the annexed petition of INTERTECH INDUSTRIES, INC., the Debtor-in-Possession herein, dated August 4, 1970, the consent of SHEA, GALLOP, CLIMENKO & GOULD, ESQS., attorneys for the SECURITY NATIONAL BANK, and the consent of GOLDMAN, HOROWITZ & CHERNO, ESQS., attorneys for the Creditors' Committee of the Debtor, and due deliberation having been had, it is

ON MOTION of SCHWARTZ & DUBERSTEIN, ESQS., attorneys for the Debtor-in-Possession,

ORDERED, that INTERTECH INDUSTRIES, INC. be and it hereby is authorized to assign the following contracts previously entered into between it and the United States of America:—

Exhibit 10—Order

Number of Contract	*Bank to Whom Contract Is to Be Assigned*
DAAP01-69-C-0688	First National Bank of Toledo Toledo, Ohio
DAAP01-69-C-0863	Long Island Trust Company Broadhollow Road Route 110, East Farmingdale Branch Farmingdale, New York
DAAJ01-69-C-0432	Merchants Bank of New York 434 Broadway New York, New York

and it is further

ORDERED, that the foregoing assignments shall be without prejudice and shall in no way affect the rights of the SECURITY NATIONAL BANK in and to any excess received by the assignees thereof over and about the amounts due said assignees arising out of the performance of said contracts, and which rights were reserved to the SECURITY NATIONAL BANK under the security agreements held by it affecting said contracts.

BORIS RADOYEVICH
Referee in Bankruptcy

CONSENTED TO:

SHEA, GALLOP, CLIMENKO & GOULD, ESQS.

BY: /s/ (Signature illegible)
Attorneys for Security National Bank

GOLDMAN, HOROWITZ & CHERNO, ESQS.

BY: /s/ (Signature illegible)
Attorneys for Creditors' Committee

Exhibit 10—Petition

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

In the Matter

—of—

INTERTECH INDUSTRIES, INC.,

Debtor.

PETITION

The petition of INTERTECH INDUSTRIES, INC., respectfully shows to this Honorable Court and alleges:—

1. That it is the Debtor-in-Possession herein.

2. That it is engaged in the business of operating a machine shop and the bulk of its work is in performing machining contracts received from the United States of America under Defense Department contracts.

3. That prior to said arrangement, petitioner entered into security agreements with the SECURITY NATIONAL BANK and that, among other things, said SECURITY NATIONAL BANK was given a security interest in said Government contracts as security for advances made by said Bank to your petitioner.

4. That petitioner has been negotiating with several subcontractors who have indicated their willingness to perform several of the contracts under an arrangement whereby the

Government would pay the subcontractors directly the total amount due thereunder, the subcontractor will

[sic]

will be less than the contract price between the Debtor and the Government, and the subcontractor will then cause the excess to be remitted either to the SECURITY NATIONAL BANK or to the Debtor who shall remit the excess to the Bank.

5. That the Government has informed your petitioner that it has no objection to the foregoing arrangement as long as the assignment of contract runs to the subcontractor's bank.

6. That the SECURITY NATIONAL BANK has agreed to and has already executed releases of their assignments and rights in and to said contracts, reserving to themselves, however, their right to the aforesaid excesses.

7. That the contracts petitioner desires to assign, the names of the subcontractors and the Banks to whom they are to be assigned are as follows:—

Contract Number	Subcontractor	Bank to Whom Contract Is to Be Assigned
DAAF01-69-C-0688	Rimer Precision Castings, Inc.	First National Bank of Toledo Toledo, Ohio
DAAF01-69-C-0863	Romark Industries	Long Island Trust Co. Broadhollow Road Route 110, East Farmingdale Branch Farmingdale, N.Y.
DAAJ01-69-C-0432	Aircraft Precision Parts Co.	Merchants Bank of N.Y. 434 Broadway New York, New York

8. That petitioner believes it to be for the best interests of creditors that an order be entered as requested, inasmuch as it will inure to petitioner's benefit since it will give petitioner an opportunity to have the contracts completed at a profit and contribute to the reduction of petitioner's obligation to the SECURITY NATIONAL BANK thereby increasing petitioner's equity in its assets.

9. That in the event petitioner is not permitted to subcontract the contracts and follow through with the request contained herein, petitioner will be unable to complete the contracts itself, as a result of which the same will be cancelled with resultant substantial damage claims in favor of the Government and in which event petitioner will further be unable to proceed with its arrangement, whereas if petitioner is permitted that which it seeks, it will contribute to its remaining in business and enable it to effect a satisfactory arrangement with its creditors.

WHEREFORE, petitioner respectfully prays for the entry of the annexed order.

DATED: Brooklyn, New York
August 4, 1970

INTERTECH INDUSTRIES, INC.

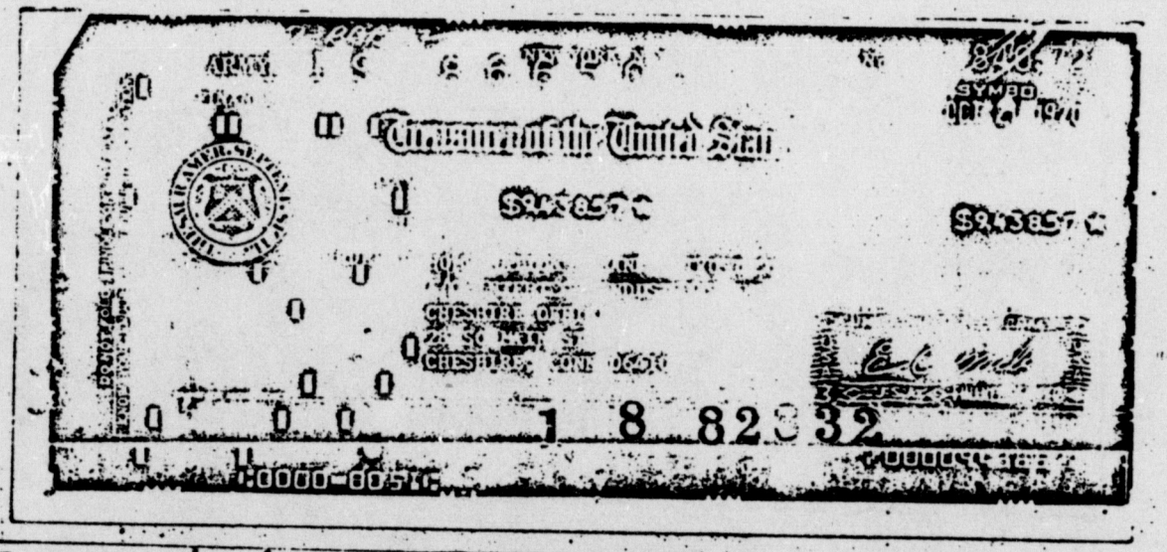
BY: /s/ STANLEY SILVER
STANLEY SILVER, *Pres.*

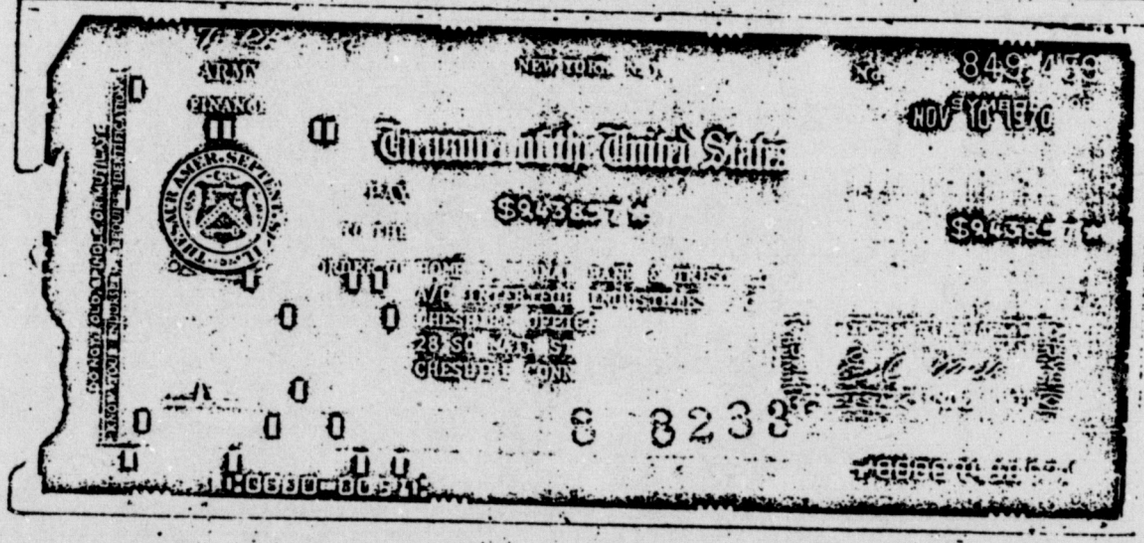
Exhibits 11 to 13

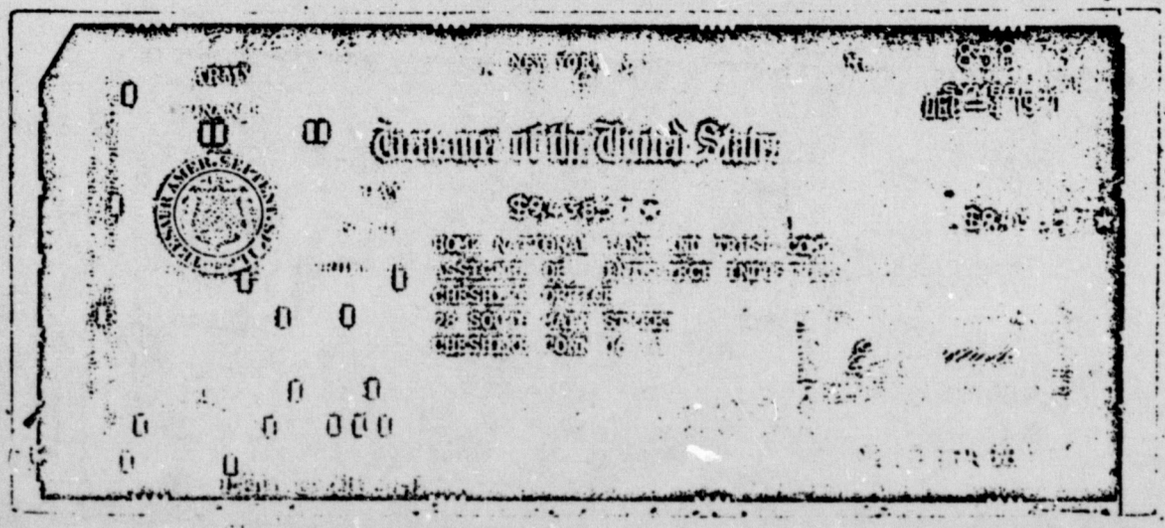
[Treasury Checks Payable to the
First National Bank of Toledo]

(See opposite) ☞

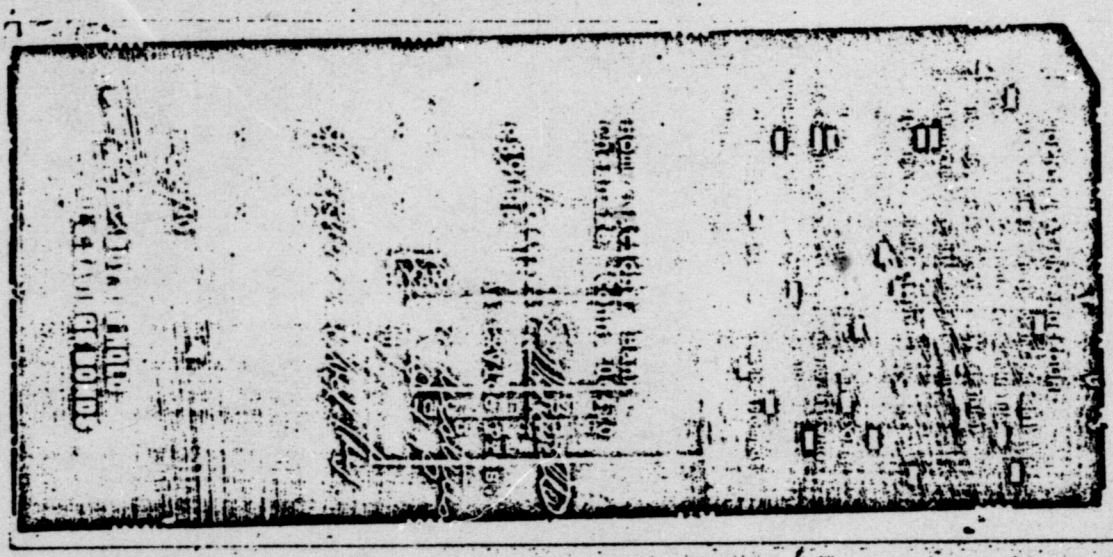
Exhibits 11 to 13

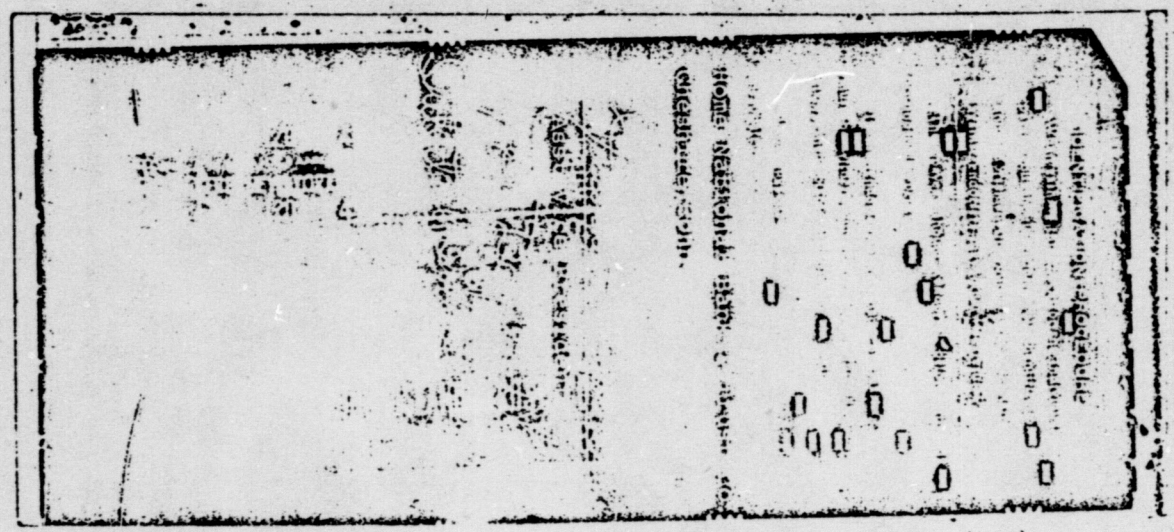






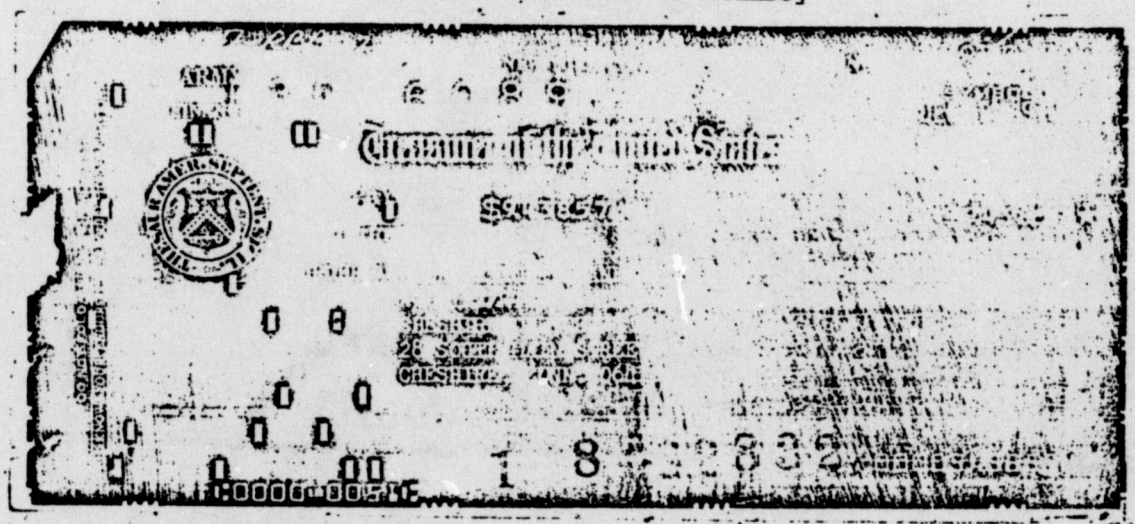
Exhibits 11 to 13

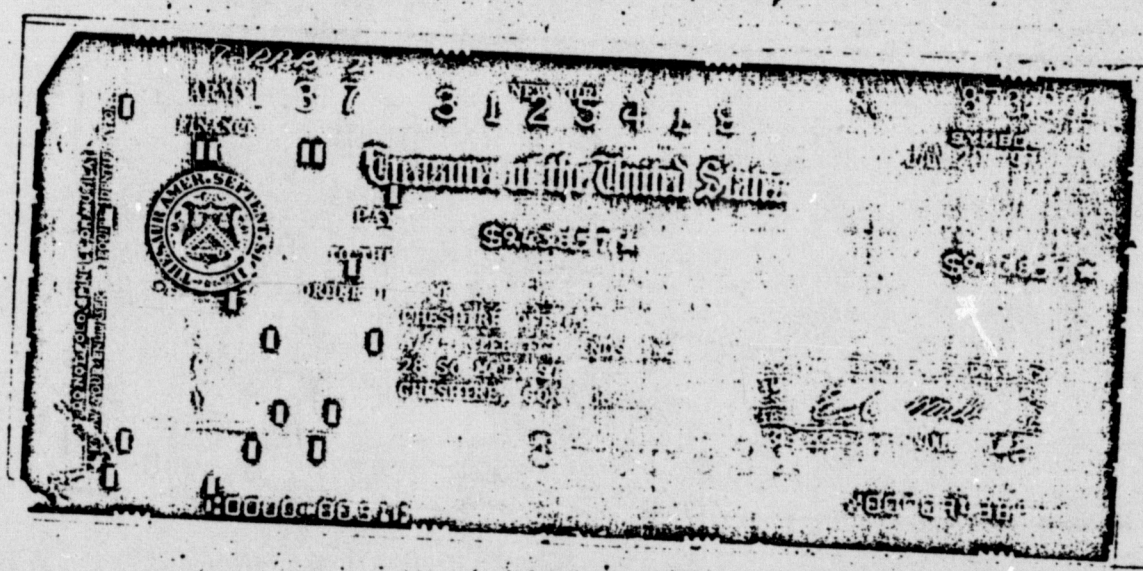


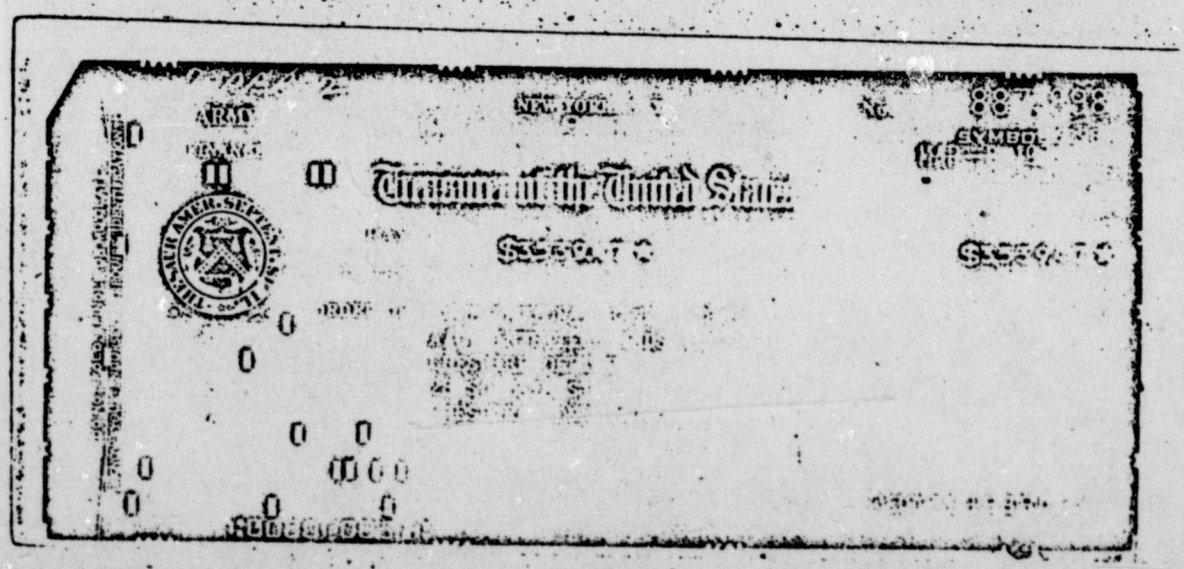


Exhibits 14 to 16

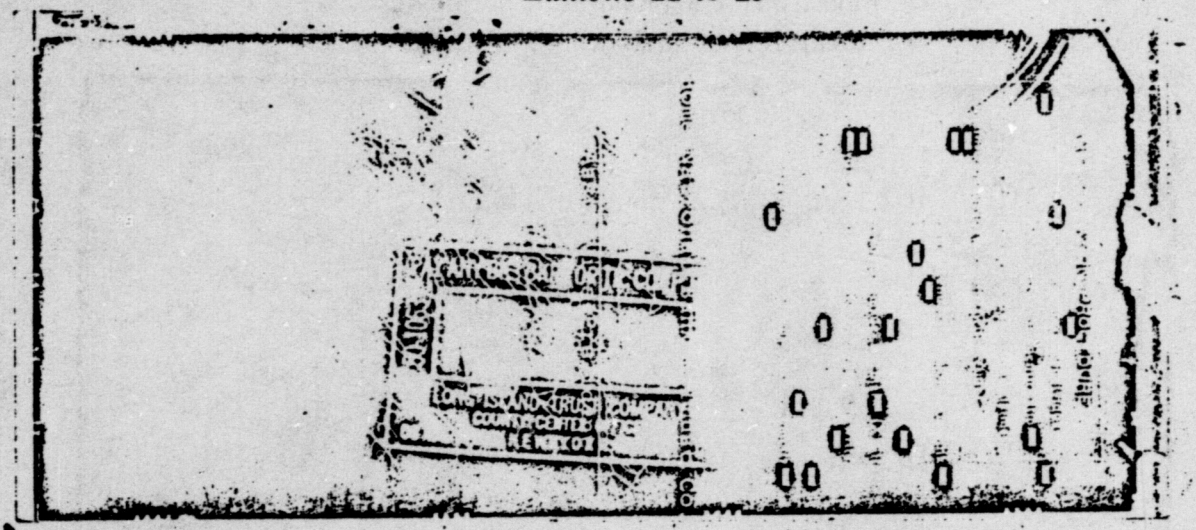
[Treasury Checks Payable to the First National Bank of Toledo]

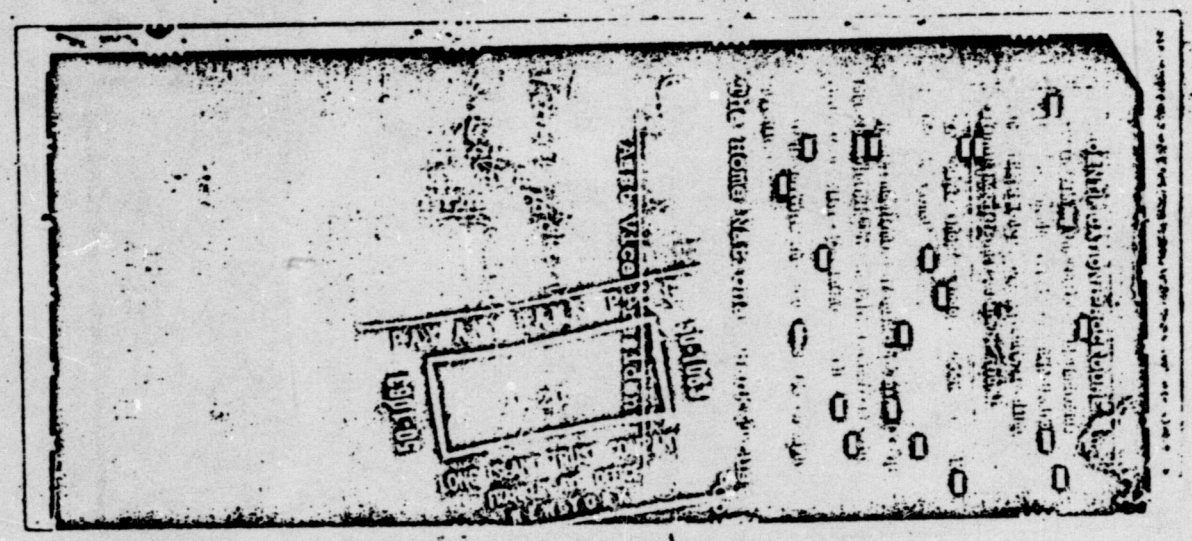






Exhibits 14 to 16





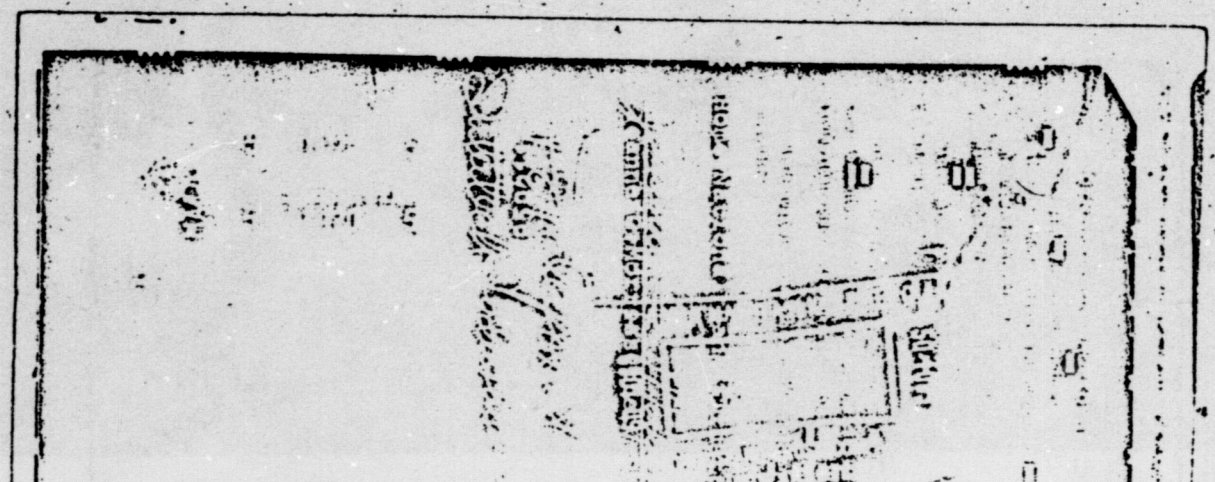


Exhibit 17

[INDICTMENT. CRIMINAL No. 72 CR. 955.]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

—against—

STANLEY SILVER,

Defendant.

INDICTMENT

Crim. No. 22CR955
(T. 18, U.S.C., §152, §495 and §2)

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 2nd day of February 1971, within the Eastern District of New York, the defendant STANLEY SILVER, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 877,541 dated February 1, 1971, in the sum of Eight Thousand One Hundred Sixty-Eight Dollars and Ninety-Five Cents ($8,168.95), payable to "First National Bank of Toledo A/C: Intertech Inds Inc Toledo Ohio", upon which

the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

COUNT TWO

On or about the 9th day of February 1971, within the Eastern District of New York, the defendant STANLEY SILVER, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 878,357 dated February 3, 1971, in the sum of Sixteen Thousand Three Hundred Thirty-Seven Dollars and Ninety Cents ($16,337.90), payable to "First National Bank of Toledo A/C: Intertech Inds Inc Toledo Ohio", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

COUNT THREE

On or about the 23rd day of March 1971, within the Eastern District of New York, the defendant STANLEY SILVER, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 892,589 dated March 22, 1971, in the sum of Eight Thousand One Hundred Sixty-Eight Dollars and Ninety-Five Cents ($8,168.95), payable to "First National Bank of Toledo A/C: Intertech Inds Inc. Toledo Ohio", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

Exhibit 17

COUNT FOUR

On or about the 4th day of May 1971, within the Eastern District of New York, the defendant STANLEY SILVER, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 906,688 dated May 3, 1971, in the sum of Eight Thousand One Hundred Sixty-Eight Dollars and Ninety-Five Cents ($8,168.95), payable to "First National Bank of Toledo A/C Intertech Inds Inc Toledo, Ohio", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

COUNT FIVE

On or about the 27th day of May 1971, within the Eastern District of New York, the defendant STANLEY SILVER, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 915,402 dated May 26, 1971, in the sum of Seventeen Thousand Nine Hundred Seventy-One Dollars and Sixty-Nine Cents ($17,-971.69), payable to "First National Bank of Toledo assignee of: Intertech Industries Inc Waterville Branch Toledo Ohio", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

COUNT SIX

On or about the 12th day of August 1971, within the Eastern District of New York, the defendant STANLEY SILVER, with intent to defraud the United States, did utter and pub-

lish as true United States Treasury Check No. 938,741 dated August 11, 1971, in the sum of Eight Thousand Two Hundred Twenty Dollars and Eleven Cents ($8,220.11), payable to "First Natonal Bank of Toledo A/C: Intertech Industries Inc Toledo Ohio", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

Count Seven

On or about the 22nd day of October 1970, within the Eastern District of New York, the defendant Stanley Silver, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 840,726 dated October 21, 1970, in the sum of Nine Thousand Four Hundred Thirty Eight Dollars and Fifty-Seven Cents ($9,438.57), payable to "Home National Bank and Trust Co. A/C: Intertech Industries Inc. Cheshire Office 28 So Main St, Cheshire, Conn 06410", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

Count Eight

On or about the 12th day of November 1970, within the Eastern District of New York, the defendant Stanley Silver, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 849,459 dated November 10, 1970, in the sum of Nine Thousand Four Hundred Thirty-Eight Dollars and Fifty-Seven Cents ($9,438.57), payable to "Home National Bank & Trust

Co. A/C Intertech Industries Inc. Cheshire Office 28 So Main St Cheshire, Conn", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

Count Nine

On or about the 4th day of December 1970, within the Eastern District of New York, the defendant Stanley Silver, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 858,784 dated December 4, 1970, in the sum of Nine Thousand Four Hundred Thirty-Eight Dollars and Fifty-Seven Cents ($9,438.57), payable to "Home National Bank and Trust Company assignee of: Intertech Industries, Inc. Cheshire Office 28 South Main Street Cheshire Conn 06410", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

Count Ten

On or about the 16th day of December 1970, within the Eastern District of New York, the defendant Stanley Silver, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 859,792 dated December 14, 1970, in the sum of Nine Thousand Four Hundred Thirty-Eight Dollars and Fifty-Seven Cents ($9,438.57), payable to "Home National Bank & Trust Co, A/O Intertech Inds Inc Cheshire Office 28 South Main Street Cheshire, Conn (06410", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

Exhibit 17

COUNT ELEVEN

On or about the 21st day of January 1971, within the Eastern District of New York, the defendant STANLEY SILVER, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 873,051 dated January 20, 1971, in the sum of Nine Thousand Four Hundred Thirty-Eight Dollars and Fifty-Seven Cents ($9,438.57), payable to "Home National Bank & Trust Co Cheshire Office A/C: Intertech Inds Inc 28 So Main Street Cheshire, Conn 06410", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

COUNT TWELVE

On or about the 10th day of March 1971, within the Eastern District of New York, the defendant STANLEY SILVER, with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 887,898 dated March 3, 1971, in the sum of Three Thousand Five Hundred Thirty-Nine Dollars and Forty-Seven Cents ($3,539.47), payable to "Home National Bank & Trust Co A/C: Intertech Inds Inc Cheshire Office 28 So Main St Cheshire, Conn 06410", upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2)

COUNT THIRTEEN

From on or about the 3rd day of February 1970, and continuously thereafter until on or about the 3rd day of November, 1971, within the Eastern District of New York,

Exhibit 17

the defendant STANLEY SILVER knowingly and fraudulently did conceal from the referee in bankruptcy in The Matter of Intertech Industries, Inc., Docket #70 B 59 and from creditors in the aforementioned bankruptcy proceeding then pending in the United States District Court for the Eastern District of New York, property of the approximate value of One Hundred Eleven Thousand Four Hundred Sixty Dollars and Eleven Cents ($111,460.11) belonging to the estate of the said Bankrupt, Intertech Industries, Inc., consisting of cash receipts. (Title 18, United States Code, §152 and §2)

A TRUE BILL

.....

Foreman

.....

United States Attorney
Eastern District of New York

Order of Probation

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

No. 72CR-955

UNITED STATES OF AMERICA,

—v.—

STANLEY SILVER.

On this 12th day of January, 1973 came the attorney for the government and the defendant appeared in person and with counsel.

IT IS ADJUDGED that the defendant upon his plea of guilty and the court being satisfied there is a factual basis for the plea has been convicted of the offense of violating Title 18 U.S. Code Sections 495 and 2 in that on or about Feb. 2, 1971, the defendant, with intent to defraud the U.S., did utter and publish as true a U.S. Treasury Check payable to another, upon which the name of the payee had been forged, knowing the payee's name to be forged as charged in count 1 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

Order of Probation

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 1 year and 1 day on count 1 pursuant to Sec. 3651 of T-18, U.S. Code. Defendant to serve 3 months and execution of remainder of sentence is suspended and the defendant is placed on probation for 2 years subject to the standard conditions of probation as set forth in the standing order of this court dated Oct. 13, 1964. Defendant to pay a fine of $1,000.00 and to stand committed until said fine is paid. On application of Asst. U.S. Att. Bashian counts 2 to 13 are dismissed. Execution of sentence is stayed until February 9, 1973 by 4:00 P.M.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

George Rosling,
United States District Judge.

Answer of Defendant, Stanley Silver, to Interrogatories

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

The defendant, STANLEY SILVER, as and for his answers to the Interrogatories by plaintiff, sets forth the following:

Interrogatory No. 1

The defendant admits the statements contained in Interrogatory No. 1. The checks were received by presentation to the Defense Contract Administration Services Region of a photostat of an original letter from the First National Bank of Toledo as to the first six checks and from the Home National Bank and Trust Co. as to the second six checks.

Interrogatory No. 2

The checks attached as Exhibits 1-12 are true and accurate copies of the checks listed in Interrogatory No. 1.

Interrogatory No. 3

The defendant admits that he endorsed said checks.

Interrogatory No. 4

The defendant admits that the endorsements were forgeries and that he forged said endorsements.

Answer of Defendant, Stanley Silver, to Interrogatories

Interrogatory No. 5

The denial in the Answer was based on the broad legal ground that the Treasury checks were genuine checks.

Interrogatory No. 6

On each occasion when one of the Treasury checks in question was received, a letter was presented to DCASR which purportedly authorized the defendant to receive the checks on behalf of the Home National Bank and Trust Co. or the First National Bank of Toledo.

Interrogatory No. 7

The letters presented to DCASR were identical to Exhibit 13.

Interrogatory No. 8

The original of each of the letters presented to DCASR was received from each of the respective banks. The photostats were made by the defendant.

Interrogatory No. 9

The denial of paragraph 9 of the Complaint was because of objection to the use of the words "forged or altered", the said letters being photostats of the originals.

Interrogatory No. 10

The defendant makes the same answer hereto as to Interrogatory No. 9.

Answer of Defendant, Stanley Silver, to Interrogatories

Interrogatory No. 11

The defendant admits that he pled guilty to Count one as set forth in said Interrogatory.

Dated: New York, New York
June 27, 1974

STANLEY SILVER

ARTHUR N. FIELD
DI FALCO, FIELD & O'ROURKE
Attorneys for Defendant
Office & P. O. Address:
605 Third Avenue
New York, New York 10016

(Verified by Stanley Silver, as Defendant, June 27, 1974.)

Further Answer of Defendant, Stanley Silver, to Interrogatories

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

The defendant, STANLEY SILVER, as and for his further answers to the Interrogatories by plaintiff, sets forth the following:

Interrogatory No. 7

With reference to each such letter, only the first letter was an original letter signed by the bank. Copies were made thereof by xeroxing it. The reproductions were intentional. The date of the original letter is presently unknown. The copies were presented to the Defense Contract Administration Services Region. The date of each such presentment is presently unknown, except that the dates probably correspond with the date of issuance of each check.

The purpose of presenting such letter or letters to the Defense Contract Administration Services Region was to procure the funds which had been processed for shipments made. As a result thereof, the checks were received on the dates and in the amounts set forth in said checks.

Further Answer of Defendant, Stanley Silver, to Interrogatories

The answers hereinabove set forth apply to the checks annexed as Exhibits 1 through 6 and to the checks annexed as Exhibits 7 through 12.

Dated: New York, New York
July 15, 1974

STANLEY SILVER

ARTHUR N. FIELD
DI FALCO, FIELD & O'ROURKE
Attorneys for Defendant
605 Third Avenue
New York, New York 10016

(Verified by Stanley Silver, as Defendant, July 17, 1974.)

Notice of Cross-Motion for Summary Judgment

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

SIRS:

PLEASE TAKE NOTICE, that upon the pleadings herein and upon all the papers served by you on the 9th day of September, 1974, whereby you gave notice of motion for summary judgment for plaintiff, and upon the annexed affidavit of Arthur N. Field, duly sworn to the 11th day of September, 1974, and the statement of material facts annexed hereto, the undersigned will make a cross-motion upon the argument of your said motion before Hon. John R. Bartels, at Courtroom No. IV, Fourth Floor, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 20th day of September, 1974 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting summary judgment in defendant's favor dismissing this action, on the ground that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law, together with such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
September 11, 1974

Yours, etc.,

Di Falco, Field & O'Rourke

By Arthur N. Field
a Member of the Firm
Attorneys for Defendant
Office & P. O. Address:
605 Third Avenue
New York, New York 10016

To:

David G. Trager
United States Attorney

By: Howard J. Stechel
Assistant United States Attorney
225 Cadman Plaza East
Brooklyn, New York 11201

Affidavit of Arthur N. Field

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

ARTHUR N. FIELD, being duly sworn, deposes and says:

1. I am an attorney associated with Di Falco, Field & O'Rourke, attorneys for the defendant herein. I have been in charge of this action since its inception and I am familiar with all of the matters relating thereto.

2. The United States Attorney and I have agreed that practically all of the essential facts in this case are undisputed. The only dispute between us is as to the legal interpretation, it being my respectful contention that on the presumption that all of the facts are true, the complaint in this case fails to state a cause of action.

3. The facts and the law have been set forth in the memoranda submitted by the United States Attorney's office and my office and will not be discussed in this affidavit.

4. There is annexed hereto the defendant's concessions as to the material facts set forth in the statement of the plaintiff as well as the material facts claimed by the defendant to be undisputed.

5. On the facts and law, the defendant respectfully prays that the complaint be dismissed.

ARTHUR N. FIELD

(Sworn to by Arthur N. Field on September 11, 1974.)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

STATEMENT PURSUANT TO RULE 9(g) OF THE GENERAL RULES OF THIS COURT ANNEXED TO AFFIDAVIT OF ARTHUR A. FIELD

[CAPTION OMITTED]

SIRS:

PLEASE TAKE NOTICE, that the defendant accepts the following material facts set forth in the statement of the plaintiff, United States of America:

Material Fact #1
Material Fact #2
Material Fact #3
Material Fact #4
Material Fact #5
Material Fact #6
Material Fact #7
Material Fact #8
Material Fact #9
Material Fact #10
Material Fact #12
Material Fact #13
Material Fact #14
Material Fact #15
Material Fact #16
Material Fact #17

With reference to Material Fact #11, the defendant denies that the checks were false, fictitious and/or fraudulent. The defendant contends that the checks were genuine and properly drawn and represented payment on a legitimate claim. The defendant admits that the subsequent endorsement on the checks was forged.

With reference to Material Fact #18, the defendant denies that the checks were false, fictitious and/or fraudulent. The defendant contends that the checks were genuine and properly drawn and represented payment on a legitimate claim. The defendant admits that the subsequent endorsement on the checks was forged.

PLEASE TAKE FURTHER NOTICE, that the following are the material facts as to which defendant, Stanley Silver, contends there is no genuine issue to be tried. Each material fact is followed with an appropriate reference.

MATERIAL FACT A

All of the terms and conditions of the contract between Intertech Industries, Inc. and the United States Navy, which contract bore Navy Contract No. N 00197-68-C0581, were completed on behalf of Intertech Industries, Inc. and/or its assigns, except that the defendant caused the United States to deliver progress payments to defendant rather than the Home National Bank and Trust Co.

REFERENCE A

See Interrogatory No. 1 and Interrogatory No. 2, and the responses thereto, as contained in plaintiff's answers to defendant's interrogatories.

Statement Pursuant to Rule 9(g)

MATERIAL FACT B

The plaintiff, United States of America, suffered no loss by reason of the acts of Stanley Silver, the defendant herein, or Intertech Industries, Inc. with reference to said contract.

REFERENCE B

This is admitted in Interrogatory No. 3 and the response thereto in the plaintiff's answers to defendant's interrogatories.

MATERIAL FACT C

All of the terms and conditions of the contract between Intertech Industries, Inc. and the United States Army, which contract bore Army Contract No. DAAF 01-69-C 0688, were completed on behalf of Intertech Industries, Inc. and/or its assignee, except that the defendant caused the United States to deliver progress payments to defendant rather than The First National Bank of Toledo, Ohio.

REFERENCE C

See Interrogatory Nos. 4 and 5 and the responses thereto in plaintiff's answers to defendant's interrogatories.

MATERIAL FACT D

The plaintiff, United States of America, suffered no loss by reason of the acts of Stanley Silver, the defendant herein, or Intertech Industries, Inc. with reference to said contract.

REFERENCE D

This is conceded in Interrogatory No. 6 and the response thereto in plaintiff's answers to defendant's interrogatories.

MATERIAL FACT E

The plaintiff was not deprived of any monies by reason of any false, fictitious or fraudulent claims filed or made by defendant.

REFERENCE E

This is conceded in Interrogatory No. 8 and the response thereto in plaintiff's answers to defendant's interrogatories.

MATERIAL FACT F

No claim has been made against the plaintiff by the First National Bank of Toledo or the Home National Bank and Trust Co.

REFERENCE F

This is conceded in Interrogatory No. 9 and the response thereto contained in plaintiff's answers to defendant's interrogatories.

Statement Pursuant to Rule 9(g)

Dated: New York, New York
September 11, 1974

DI FALCO, FIELD & O'ROURKE

By ARTHUR N. FIELD
A Member of the Firm
Attorney for Defendant
Office & P. O. Address
605 Third Avenue
New York, New York 10016

To:

DAVID G. TRAGER
United States Attorney

By: HOWARD J. STECHEL
Assistant United States Attorney
225 Cadman Plaza East
Brooklyn, New York 11201

Opinion of Hon. John R. Bartels, D.J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

Appearances:

HON. DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Plaintiff

HOWARD J. STECHEL, Esq.
Assistant U.S. Attorney

MARK A. CYMROT, Esq.
Attorney, Fraud Section
Civil Division
Department of Justice
Washington, D.C. 20530
Of Counsel

DIFALCO, FIELD & O'ROURKE, Esqs.
Attorneys for Defendant
605 Third Avenue
New York, N.Y. 10016

ARTHUR N. FIELD, Esq.
Of Counsel

BARTELS, D.J.

This action was brought by the United States, pursuant to 31 U.S.C. §232, to recover statutory forfeitures under the False Claims Act, 31 U.S.C. §§231-235. The parties have stipulated all material facts and both now move for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, 28 U.S.C. The facts are, briefly, as follows: The defendant Stanley Silver was president of Intertech Industries, Inc. ("Intertech"), a manufacturer which supplied ordnance replacement parts to the Armed Forces of the United States pursuant to several Government contracts. Intertech held the prime contracts but employed subcontractors for the two contracts involved in this action. In January, 1970, Intertech filed a petition in bankruptcy under Chapter XI, 11 U.S.C. §§701 *et seq.*, and continued operations but in order to assure payment to the subcontractors and thereby secure their continued work on the contracts, it assigned the proceeds of each contract with the Government to a separate bank in each case, which would distribute the progress payments, received from the Government, between the subcontractors and Intertech. The subcontractors were entitled to 52% of these proceeds and Intertech was entitled to 48% thereof.

Because this arrangement caused delay in the ultimate receipt of the proceeds by the subcontractors and Intertech, each bank provided Intertech with a letter of authorization to pick up the next progress payment check due, made payable to each bank, directly from the Government, thereby eliminating the mailing time from the Government to the banks. Thereafter Silver, without authority, photostated these original letters and collected from the Govern-

ment the remaining progress payment checks by changing only the date on each letter, but failed to deliver the same to the banks. Twelve Treasury checks, totalling $117,768.87, were obtained by Silver in this manner. Upon receipt of each check, Silver forged the endorsement of an officer of the payee-bank and deposited the check into an Intertech account at a different bank. Through normal banking channels, the checks were presented to and honored by the United States Treasury and the proceeds were credited to the Intertech account. Although the subcontractors were not paid their share of the checks at that time, they were ultimately made whole by Silver. Consequently, it is conceded that the United States suffered no actual damages as a result of the defendant's actions.

The Government charges that the defendant's actions violated the False Claims Act and accordingly seeks, pursuant to 31 U.S.C. §231, $2,000 for each of the twelve checks with forged endorsements. Section 231 provides that:

> "Any person . . . who shall make or cause to be made, or *present or cause to be presented,* for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States . . . knowing such claim to be false, fictitious, or fraudulent . . . shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit . . . ." (Emphasis added.)

The defendant claims that his actions do not come within the terms and purpose of the False Claims Act because (1) the checks were not the type of claims contemplated by Congress in enacting the statute, (2) the check was a valid one issued to a proper payee for a debt actually owed by the Government, and (3) no damages were sustained by the United States.

The defendant bases his first claim on the purpose of the Act as evidenced by its history. The False Claims Act was originally enacted in 1863 to protect the Government from the existing practice of billing the Government for necessities of war at exorbitant prices or for non-existent or worthless goods. *United States* v. *McNinch,* 356 U.S. 595, 599 (1958). In 1878 the criminal provisions of the Act were codified in R.S. §5438, and the civil provisions were codified in R.S. §3490, which permitted the Government to recover forfeitures and damages for the same acts prohibited in §5438 by incorporating that section by reference. In 1948 the criminal provisions were altered and recodified in 18 U.S.C. §§287, 1001, while the civil provisions remained unaltered and codified in 31 U.S.C. §231. See *United States* v. *Neifert-White Company,* 390 U.S. 228, 228 n.1, 230 n.3 (1968); *Rainwater* v. *United States,* 356 U.S. 590, 590 n.1, 592 n.8 (1958); *United States* v. *Klein,* 230 F.Supp. 426, 430 (W.D. Pa. 1964), *affirmed,* 356 F.2d 983 (3d Cir. 1966).

The Supreme Court has said that the congressional purpose behind the False Claims Act was to "protect the funds and property of the Government from fraudulent claims, regardless of the particular form, or function, of the government instrumentality upon which such claims were

made." *Rainwater* v. *United States, supra,* at 592. In short, the purpose was to stop the "plundering of the public treasury." *United States* v. *McNinch, supra,* at 599. While it is clear that the False Claims Act was not designed to reach every kind of fraud practiced on the United States, *United States* v. *McNinch, supra,* at 599; *United States* v. *Cochran,* 235 F.2d 131 (5th Cir.), *cert. denied,* 352 U.S. 941 (1956); *United States* v. *Marple Community Record, Inc.,* 335 F.Supp. 95 (E.D. Pa. 1971), it is equally clear that its purpose is to reach "to all fraudulent attempts to cause the Government to pay out sums of money." *United States* v. *Neifert-White Company, supra,* at 233. See also *United States* v. *Marple Community Record, Inc., supra,* at 99. In distinguishing the kinds of actions which constitute claims against the Government within the meaning and intent of the Act and those which do not, the Supreme Court has said in *United States* v. *Neifert-White Company, supra,* at 232:

> "[In *McNinch*] [t]his Court held that since FHA 'disburses no funds nor does it otherwise suffer immediate financial detriment,' . . . the transaction was not within the ambit of the False Claims Act. The Court emphasized the distinction between contracts of insurance against loss such as those involved in *McNinch,* and transactions in which the United States pays or lends money. For purposes of the present case, we need not reconsider the validity of this distinction. It is sufficient to note that the instant case involves a false statement made with the purpose and effect of inducing the Government immediately to part with money."

It is apparent that the scope of the Act was not meant to be limited to the narrow one suggested by the defendant of only reaching the particular evil of cheating the Government by means of billing for worthless or nonexistent goods or at exorbitant prices. Instead, any actions which have the purpose and effect of causing the Government to immediately pay out money are clearly "claims" within the purpose of the Act. Several cases clearly indicate that the presentation or causing the presentation of a Treasury check has such purpose and effect. *United States* v. *Fowler,* 282 F.Supp. 1 (E.D.N.Y. 1968); *United States* v. *Scolnick,* 219 F.Supp. 408 (D.Mass. 1963), *affirmed,* 331 F.2d 598 (1st Cir. 1964). Therefore, Silver's actions clearly constituted the causing of the presentation of "claims" against the Government within the Act.

The defendant argues that even if these checks are "claims" within the meaning of the Act, they are not false, fictitious, or fraudulent because each check was validly issued to a proper payee for a debt actually owed by the Government to that payee. However, because Silver knew that he was "wholly unauthorized to present and demand or receive any money on" each check, although each was an originally valid claim, his claims were clearly false, fictitious, or fraudulent under the Act. *Dimmick* v. *United States,* 116 F. 825, 828 (9th Cir. 1902). By forging the payee's endorsement Silver clearly misrepresented the material fact of his identity with a clear intent to deceive the United States and is thus guilty of fraud as that term has been defined for the purposes of the Act. *United States* v. *Farina,* 153 F.Supp. 819, 822 (D.N.J. 1957); *Cahill* v. *Curtiss-Wright Corp.,* 57 F.Supp. 614, 616 (W.D. Ky. 1944).

Finally, the defendant argues that his actions are not within the scope of the Act because the United States suffered no actual damages as a result. But here the United States was clearly exposed to potential double liability on the amounts of the checks and the mere fact that an attempted fraud is discovered and as a result of that discovery all parties are ultimately made whole cannot alter the nature of Silver's actions. To so hold would make the Act dependent upon the success of the fraud and would do little to carry out the function of the Act, which was to discourage and prevent such actions. Thus, in several cases forfeitures were allowed without the existence or proof of actual damages. *United States ex rel. Marcus* v. *Hess,* 317 U.S. 537 (1943); *Fleming* v. *United States,* 336 F.2d 475 (10th Cir. 1964), *cert. denied,* 380 U.S. 907 (1965); *United States* v. *Rainwater,* 244 F.2d 27 (8th Cir. 1957), *affirmed,* 356 U.S. 590 (1958); *United States* v. *Tieger,* 234 F.2d 589 (3d Cir.), *cert. denied,* 352 U.S. 941 (1956); *United States* v. *Rohleder,* 157 F.2d 126 (3d Cir. 1946). See also *United States* v. *Ridglea State Bank,* 357 F.2d 495, 497 (5th Cir. 1966); *Toepleman* v. *United States,* 263 F.2d 697, 699 (4th Cir.), *cert. denied sub nom. Cato* v. *United States,* 359 U.S. 989 (1959).

Therefore, the defendant's actions clearly come within the terms of the statute and the United States is entitled to recover the statutory forfeitures even though it has not suffered actual damages. Since the presentation of each check constitutes a claim within the meaning of the statute, the United States is entitled to twelve forfeitures, totalling $24,000. *United States* v. *Fowler, supra; United States* v.

Scolnick, supra. See also *United States ex rel. Marcus* v. *Hess, supra,* at 548.

Defendant's motion for summary judgment is hereby denied and plaintiff's motion is hereby granted.

This is an order.

Dated: Brooklyn, N.Y.,
October 22, 1974.

JOHN R. BARTELS
United States District Judge

Judgment Appealed From

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

74-C-113

UNITED STATES OF AMERICA,

Plaintiff,

—against—

STANLEY SILVER,

Defendant.

An order of Honorable John R. Bartels, United States District Judge, having been filed on October 23, 1974, granting the plaintiff's motion for summary judgment for twelve forfeitures in the total amount of $24,000 plus costs and interest, and denying the defendant's motion for summary judgment, it is

ORDERED and ADJUDGED that plaintiff recover of defendant the sum of $24,000 plus interest and costs.

Dated: Brooklyn, New York
October 30, 1974

LEWIS ORGEL
Clerk

Notice of Appeal

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Civil Action No. 74-C-113

UNITED STATES OF AMERICA,

Plaintiff,

—against—

STANLEY SILVER,

Defendant.

SIRS:

NOTICE is hereby given that Stanley Silver, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 30th day of October, 1974 wherein the plaintiff was awarded judgment against the defendant in the sum of $22,000.00, and the defendant appeals from each and every part of said judgment.

Notice of Appeal

Dated: New York, New York
November 6, 1974

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Stipulation Amending Notice of Appeal

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Civil Action No. 74 C 113

UNITED STATES OF AMERICA,

Plaintiff,

—against—

STANLEY SILVER,

Defendant.

IT IS HEREBY AGREED by and between the attorneys for plaintiff and defendant that on or about November 6, 1974, the defendant filed a Notice of Appeal to the United States Court of Appeals for the Second Circuit which in words and figures read as follows:

> "NOTICE is hereby given that STANLEY SILVER, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 30th day of October, 1974 wherein the plaintiff was awarded judgment against the defendant in the sum of $22,000.00, and the defendant appeals from each and every part of said judgment."

IT IS HEREBY STIPULATED, CONSENTED and AGREED to by and between the attorneys for the plaintiff and the defen-

dant that the Notice of Appeal set forth above is hereby amended to read as follows:

> "NOTICE is hereby given that STANLEY SILVER, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 30th day of October, 1974 wherein the plaintiff was awarded judgment against the defendant in the sum of $24,000.00, plus costs and interest, and the defendant appeals from each and every part of said judgment."

Dated: New York, N. Y.
December 3, 1974

DI FALCO, FIELD & O'ROURKE

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